

## **EXHIBIT N**

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 - - -  
4 CSX TRANSPORTATION, INC., )  
5 Plaintiff, )  
6 vs. ) Civil Action  
7 PORT ERIE PLASTICS, INC., ) Case No.  
8 Defendant. ) 05-139 Erie  
9 - - -

10 Deposition of JOHN T. JOHNSON  
11 Corporate Designee of Port Erie Plastics, Inc.

12 Thursday, February 2, 2006  
13 - - -

14 The deposition of JOHN T. JOHNSON, called as a  
15 witness by the Plaintiff, pursuant to notice and the  
16 Federal Rules of Civil Procedure pertaining to the  
17 taking of depositions, taken before me, the  
18 undersigned, Teresa Constantini Berardi, a Notary  
19 Public in and for the Commonwealth of Pennsylvania, at  
20 the law offices of MacDonald Illig Jones & Britton,  
21 LLP, 100 State Street, Suite 700, Erie, Pennsylvania  
22 16507-1498, commencing at 10:32 a.m. the day and date  
23 above set forth.  
24  
25

26 - - -  
27 COMPUTER-AIDED TRANSCRIPTION BY  
28 MORSE, GANTVERG & HODGE, INC.  
29 ERIE, PENNSYLVANIA  
30 814-833-1799  
31 - - -

PAGE 2

2

## 1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Janssen & Keenan, P.C.:  
 4 Charles L. Howard, Esquire  
 5 One Commerce Square  
 6 Suite 2050  
 7 2005 Market Street  
 8 Philadelphia, Pennsylvania 19103

7 On behalf of the Defendant:

8 MacDonald Illig Jones & Britton, LLP:  
 9 Richard J. Parks, Esquire  
 10 Scott Stroupe, Esquire  
 11 100 State Street, Suite 700  
 12 Erie, Pennsylvania 16507-1498

11 - - -

## 12 ALSO PRESENT:

13 John Underwood  
 14 James Witkowski

14 - - -

15 I-N-D-E-X

## 16 EXAMINATION BY:

17 Mr. Howard

PAGE:  
3

18 - - -

## 19 JOHNSON DEPOSITION EXHIBIT NOS.:

20 1 - Answers to Interrogatories of Plaintiff CSX  
 21 Transportation, Inc. Addressed to Defendant  
 22 Port Erie Plastics, Inc.

PAGE:  
6

22 - - -

PAGE 3

3

1 JOHN T. JOHNSON

2 Called as a witness by the plaintiff, having been  
 3 first duly sworn, as hereinafter certified, was  
 4 deposed and said as follows:

## 5 EXAMINATION

6 BY MR. HOWARD:

7 Q Good morning, Mr. Johnson.

8 A Good morning.

9 Q My name is Chuck Howard, and I think you

10 know who I am since you just sat through the

11 deposition of Mr. Witkowski.

12 A Yep.

13 Q Have you ever been deposed before?

14 A No, I don't think so.

15 Q This is your first time?

16 A Uh-huh.

17 Q I will give you the same instructions I  
 18 gave Mr. Witkowski, but it's essentially a question  
 19 and answer format.

20 Wait for me to finish my questions before  
 21 you give the answers.

22 If you answer a question, I'll assume that  
 23 you understood it.

24 Is that fair?

25 A Sounds good.

PAGE 4

4

1 Q And if you don't understand the question,  
 2 ask me to rephrase it, because it doesn't make any  
 3 sense for try to attempt to answer questions you don't  
 4 understand.

5 What is your current position?

6 A I'm the president for Port Erie Plastics.

7 Q And how long have you been the president  
 8 for Port Erie Plastics?

9 A Little over six years.

10 Q So you were the president during the time  
 11 period at issue here?

12 A Yes, sir.

13 Q And where did you work before?

14 A Bliley Electric Company.

15 Q How did you come to become the president  
 16 for Port Erie Plastics?

17 A I interviewed with the owner, and we kind  
 18 of liked each other, and he wanted to go down to  
 19 Hilton Head and play golf, and he needed somebody to  
 20 run the business because he was ready to retire, so --

21 Q Who was the owner?

22 A William Witkowski.

23 Q Is he related to Jim Witkowski?

24 A Yeah. It's his older brother.

25 Q Oh, okay.

PAGE 5

5

1 Now, I think Mr. Witkowski, who testified  
 2 earlier, said that Port Erie has been in business for  
 3 53 years?

4 A Yes, sir.

5 Q Has it always been in the Witkowski family?

6 A Yes, sir.

7 Q Let me hand you what we've already marked  
 8 as Witkowski Exhibit 1, which is the notice of  
 9 deposition.

10 We'll just adopt these exhibits  
 11 (indicating) and use them throughout here.

12 Mr. Johnson, have you seen this notice  
 13 before?

14 A Nope.

15 Well, other than an hour ago.

16 Q Have you had an opportunity, since you  
 17 first saw it, to review the 13 topics on page 2?

18 A Uh-huh, yes, sir.

19 Q Would you agree with Mr. Witkowski's  
 20 testimony, that except for the few that he identified,  
 21 that he would have been as knowledgeable as anyone  
 22 else at Port Erie in these topics?

23 A Yes, sir.

24 Q One of the things that we learned during  
 25 Mr. Witkowski's deposition is that you coordinated the

SHEET 2 PAGE 6

6

1 gathering of documents that we had requested.

2 A Yes.

3 Q Who else did that?

4 A The only individuals would be Jim, myself  
5 and Brian Fahey, who was our controller back in '03  
6 and early '04.

7 Q As part of that job, did you have a copy of  
8 CSX's document request?

9 MR. PARKS: Those are those forms  
10 (indicating).

11 A Yeah, yeah.

12 Q The interrogatory answers that we received  
13 from Port Erie, did you have anything to do with  
14 answering those?

15 A I believe so.

16 MR. HOWARD: Okay. Let's get those marked  
17 as Johnson 1.

18 (Thereupon, Johnson Deposition Exhibit  
19 No. 1 was marked for identification.)

20 BY MR. HOWARD:

21 Q Have you seen this document before?

22 A I believe I reviewed it before we submitted  
23 it, yes.

24 MR. HOWARD: Rich, are we going to get a  
25 verification at some point?

PAGE 8

8

1 product.

2 They would get a daily report from us that  
3 would show what was running, what the daily output  
4 was, what the previous day's output was.

5 They would then make a determination based  
6 on their needs what needed to run, what didn't need to  
7 run.

8 It was their responsibility to make sure  
9 there was enough resin available for us to fulfill  
10 those needs.

11 MR. PARKS: If I might, I think that might  
12 be a typo.

13 You actually asked Presque Isle to bring  
14 the trucks over; correct?

15 THE WITNESS: We would -- they would make  
16 sure that there were enough at Presque Isle. We  
17 would then schedule them.

18 They would call us, tell us, "Do you want  
19 any?"

20 We would say "yes" or "no," to make sure  
21 that we had enough to keep the presses running  
22 that Nexpak asked us to keep running that  
23 particular day.

24 MR. PARKS: I think I transposed "Nexpak,"  
25 "Port Erie as agent for Nexpak," as far as the

PAGE 7

7

1 MR. PARKS: I can, yes.

2 MR. HOWARD: Okay.

3 BY MR. HOWARD:

4 Q On page 2, about a third of the way down,  
5 subheading b., do you see that? "Port Erie was not a  
6 party to any shipping" -- do you see that?

7 A Uh-huh.

8 Q The third sentence in that paragraph says,  
9 "Port Erie Plastics did receive shipments of Nexpak  
10 resin from Presque Isle Trucking as directed by Nexpak  
11 as the agent of Nexpak based upon designated  
12 production runs by Nexpak on its equipment located at  
13 Port Erie Plastics."

14 It says here that the shipments received by  
15 Port Erie from Presque Isle were directed by Nexpak.

16 How did Nexpak direct the shipments of  
17 plastic by Presque Isle to Port Erie?

18 A Nexpak every day would review what our  
19 production requirements were based on their demands,  
20 would inform us of how many machines we were supposed  
21 to be running.

22 We made up to 800 or a million DVDs a day  
23 depending on what their needs were.

24 They would start machines up or slow  
25 machines down depending on what they needed for

PAGE 9

9

1 trucking.

2 MR. HOWARD: All right. So it sounds like  
3 this needs to be corrected?

4 MR. PARKS: Yes.

5 Directed by -- I believe that should say  
6 "Port Erie as the agent of Nexpak based upon  
7 designated production runs by Nexpak," and I  
8 think that was just -- I had to many Presque  
9 Isles, Port Eries.

10 MR. HOWARD: All right.

11 BY MR. HOWARD:

12 Q So this should read "Port Erie Plastics did  
13 receive shipments of Nexpak resin from Presque Isle  
14 Trucking as directed by Port Erie as the agent of  
15 Nexpak"?

16 A Yes, true statement.

17 Q Now, the communication between Port Erie  
18 and Presque Isle, both you and Mr. Witkowski have  
19 testified that that communication was going from  
20 Presque Isle in the form of a request, "Do you need  
21 anymore stuff?"

22 Is that how it always happened?

23 A I can't tell you that it happened that way  
24 a hundred percent of the time, but the majority of the  
25 time they would say, "Hey, do you need a truck today

PAGE 10

10

1 or do you need one tomorrow?"

2 Based on what was running, we'd answer, "We  
3 need one this afternoon," "We need one tomorrow  
4 morning," et cetera, like that.

5 Q Mr. Witkowski testified that he believes  
6 that Nexpak was also receiving the inventory sheets  
7 from Presque Isle.

8 Is that your understanding as well?

9 A Well, I'm sure they did, because it was  
10 their responsibility to make sure there was enough  
11 resin in the Erie area for us to manufacture based  
12 upon their needs.

13 Q In the next paragraph, the second sentence  
14 says, "It is believed Nexpak and BP would designate  
15 the shipping terms and that all shipments were made  
16 prepaid from BP/Amoco locations as designated by BP  
17 for its sales to Nexpak."

18 What the basis of that belief?

19 A Somebody had to schedule the material.  
20 Nexpak was responsible to make sure there was enough  
21 material coming from BP.

22 They did that. That was their  
23 responsibility, to negotiate with BP to make sure  
24 there was enough coming into the pipeline based on  
25 what their demands were.

PAGE 12

12

1 that railcars --

2 A They would just --

3 Q -- had just arrived?

4 A -- say, "I've got enough coming, don't  
5 worry about it," and we wouldn't know a specific  
6 railcar's timing, or whatever.

7 They would just give us comfort feeling  
8 that, "There's going to be enough resin available for  
9 what I'm going to ask you to run."

10 Q The only other thing I'll ask you is that  
11 you're starting to answer before I finish a question,  
12 which is how we would normally communicate, but she  
13 can't take down both of us at the same time, so just  
14 wait for me to finish.

15 The next sentence then says, "Port Erie  
16 Plastics would direct Presque Isle Trucking to deliver  
17 Nexpak's plastic by truck to its silo."

18 Is that an accurate statement?

19 A Yes, sir.

20 Q Do you see the sentence that says,  
21 "Port Erie Plastics would pay for the plastic resin as  
22 it was manufactured into the designated product for  
23 Nexpak as a set-off against the agreed per piece  
24 molder's charge pursuant to the agreement between  
25 Port Erie Plastics and Nexpak"?

PAGE 11

11

1 It wasn't the responsibility of Port Erie.

2 Q All right. The sentence that follows that,  
3 "Port Erie Plastics would receive information from  
4 NexPak that a train railcar was delivered to the  
5 Monfort Terminal controlled by Monfort Presque Isle  
6 Trucking."

7 In what form would Presque Isle -- I did it  
8 again.

9 In what form would Port Erie receive that  
10 information from Nexpak?

11 A We would just get a verbal from our contact  
12 there, whether it be Steve or Kevin, that, "Don't  
13 worry, there's enough railcars in the pipeline, you'll  
14 have enough there."

15 We wouldn't get any specific information,  
16 that I was aware of that, "Okay, a railcar's coming  
17 Tuesday," or "Another is coming Friday."

18 It was just, "I've got enough scheduled for  
19 what your needs are."

20 Q And that information, I think you just  
21 said, came from Steve, and that's Steve Bartosik?

22 A No, Steve Schaetzle or Kevin Kirtz,  
23 depending on the time frames. Those were the  
24 two contacts.

25 Q So you would get information from Nexpak

PAGE 13

13

1 Is that a summary of what Mr. Witkowski  
2 tried so valiantly to explain to me earlier this  
3 morning?

4 A I believe so.

5 Q Do you know where Mr. Schaetzle currently  
6 works?

7 A Yes, I do.

8 Q Where is that?

9 A Works for Alpha Security Products in  
10 Canton, Ohio.

11 Q Alpha?

12 A Yes, sir.

13 Q Alpha Security Products.

14 When was the last time you had contact with  
15 Mr. Schaetzle?

16 A Got to be two, two and a half years ago.

17 Q So you haven't had an opportunity or  
18 occasion to speak with him about this particular case?

19 A No, sir.

20 Q Do you know if anybody at Port Erie has  
21 been in contact with him about this case?

22 A Nobody has been in contact with him about  
23 that.

24 Q When did you first become aware that CSX  
25 was billing Port Erie Plastics for demurrage?

SHEET 3 PAGE 14

14

1 A Jimmy came into my office with the summary  
2 notice, if my memory is correctly, saying that CSX was  
3 billing us \$66,000 for demurrage. It was in that  
4 neighborhood.

5 Q And do you recall when that was?

6 A Two, three years ago.

7 Q And what was your response?

8 A You want my honest response?

9 Q I don't want you to lie.

10 A "Jimmy, make this fucking thing go away.  
11 It's not right."

12 MR. PARKS: You can say "F-ing."

13 BY MR. HOWARD:

14 Q Okay. I kind of thought that was coming.

15 Mr. Witkowski testified that he only  
16 recalls receiving two or three demurrage bills from  
17 CSX.

18 Is that also your understanding, that  
19 you've only received two or three demurrage bills?

20 A I don't ever remember receiving any  
21 specific demurrage bills, rather, letters of -- maybe  
22 two or three letters of notice that there were items  
23 outstanding out there.

24 I don't ever recall seeing any individual  
25 demurrage bills.

PAGE 16

16

## CERTIFICATE

2 COMMONWEALTH OF PENNSYLVANIA, )  
3 COUNTY OF ALLEGHENY. ) SS:

4 I, Teresa Constantini Berardi, do hereby certify  
5 that before me, a Notary Public in and for the  
6 Commonwealth aforesaid, personally appeared  
7 JOHN T. JOHNSON, who then was by me first duly  
8 cautioned and sworn to testify the truth, the whole  
9 truth, and nothing but the truth in the taking of his  
10 oral deposition in the cause aforesaid; that the  
11 testimony then given by him as above set forth was by  
12 me reduced to stenotypy in the presence of said  
13 witness, and afterwards transcribed by means of  
14 computer-aided transcription.

15 I do further certify that this deposition was  
16 taken at the time and place in the foregoing caption  
17 specified, and was completed without adjournment.

18 I do further certify that I am not a relative,  
19 counsel or attorney of either party, or otherwise  
20 interested in the event of this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 and affixed my seal of office at Pittsburgh,  
23 Pennsylvania, on this \_\_\_\_ day of \_\_\_\_\_,  
24 2006.

25  
Teresa Constantini Berardi, Notary Public  
In and for the Commonwealth of Pennsylvania  
My commission expires October 9, 2008.

PAGE 15

15

1 Q So you don't have a recollection of seeing  
2 the demurrage bill that Mr. Witkowski brought to your  
3 attention for the first time?

4 A First thing Mr. Witkowski -- my  
5 recollection is, was a letter notice from CSX stating  
6 we owed a large sum for demurrage.

7 I don't remember seeing an individual  
8 invoice for demurrage.

9 MR. HOWARD: Give me a few minutes and I  
10 might be done with him.

11 Thank you very much. No further questions.

12 MR. PARKS: You have the right to read your  
13 transcript, or you trust her to take it. You  
14 can't change the testimony, and I don't think  
15 she was --

16 THE WITNESS: No, that's fine.

17 MR. PARKS: -- having any problems with the  
18 transcript, so we normally waive.

19 THE WITNESS: No, that's fine.

20 MR. PARKS: We'll waive.

21 - - -

22 (Thereupon, at 10:50 a.m., the deposition  
23 was concluded and signature was waived.)

24 - - -

25





<b>\$</b>	<b>B</b>	<b>correct</b> [1] 8:14	<b>f-ing</b> [1] 14:12
<b>\$66,000</b> [1] 14:3	<b>back</b> [1] 6:5	<b>corrected</b> [1] 9:3	<b>fahey</b> [1] 6:5
<b>0</b>	<b>bartosik</b> [1] 11:21	<b>correctly</b> [1] 14:2	<b>fair</b> [1] 3:24
<b>03</b> [1] 6:5	<b>based</b> [7] 7:11, 19 8:5 9:6 10:2, 11, 24	<b>county</b> [1] 16:3	<b>family</b> [1] 5:5
<b>04</b> [1] 6:6	<b>basis</b> [1] 10:18	<b>court</b> [1] 1:1	<b>far</b> [1] 8:25
<b>1</b>	<b>become</b> [2] 4:15 13:24	<b>csx</b> [6] 1:4 2:20 13:24 14:2, 17 15: 5	<b>february</b> [1] 1:12
<b>1</b> [4] 2:20 5:8 6:17, 19	<b>behalf</b> [2] 2:2, 7	<b>csx's</b> [1] 6:8	<b>federal</b> [1] 1:15
<b>10:32</b> [1] 1:18	<b>belief</b> [1] 10:18	<b>current</b> [1] 4:5	<b>feeling</b> [1] 12:7
<b>10:50</b> [1] 15:22	<b>believe</b> [4] 6:15, 22 9:5 13:4	<b>currently</b> [1] 13:5	<b>few</b> [2] 5:20 15:9
<b>13</b> [1] 5:17	<b>believed</b> [1] 10:14	<b>D</b>	<b>fine</b> [2] 15:16, 19
<b>16507-1498</b> [2] 1:18 2:10	<b>believes</b> [1] 10:5	<b>daily</b> [2] 8:2, 3	<b>finish</b> [3] 3:20 12:11, 14
<b>2</b>	<b>berardi</b> [3] 1:16 16:4, 19	<b>date</b> [1] 1:18	<b>first</b> [6] 3:3, 15 5:17 13:24 15:3, 4
<b>2</b> [3] 1:12 5:17 7:4	<b>between</b> [2] 9:17 12:24	<b>day</b> [5] 1:18 7:18, 22 8:23 16:15	<b>follows</b> [2] 3:4 11:2
<b>2005</b> [1] 2:5	<b>bill</b> [1] 15:2	<b>day's</b> [1] 8:4	<b>form</b> [3] 9:20 11:7, 9
<b>2006</b> [1] 1:12	<b>billing</b> [2] 13:25 14:3	<b>defendant</b> [2] 1:8 2:7	<b>format</b> [1] 3:19
<b>2008</b> [1] 16:20	<b>bills</b> [4] 14:16, 19, 21, 25	<b>deliver</b> [1] 12:16	<b>forms</b> [1] 6:9
<b>3</b>	<b>bliley</b> [1] 4:14	<b>delivered</b> [1] 11:4	<b>frames</b> [1] 11:23
<b>3</b> [1] 2:17	<b>both</b> [2] 9:18 12:13	<b>demands</b> [2] 7:19 10:25	<b>friday</b> [1] 11:17
<b>5</b>	<b>bp</b> [4] 10:14, 16, 21, 23	<b>demurrage</b> [9] 13:25 14:3, 16, 19, 21, 25 15:2, 6, 8	<b>fucking</b> [1] 14:10
<b>53</b> [1] 5:3	<b>bp/amoco</b> [1] 10:16	<b>depending</b> [3] 7:23, 25 11:23	<b>fulfill</b> [1] 8:9
<b>6</b>	<b>brian</b> [1] 6:5	<b>deposed</b> [2] 3:4, 13	<b>further</b> [3] 15:11 16:10, 12
<b>6</b> [1] 2:20	<b>bring</b> [1] 8:13	<b>deposition</b> [9] 1:10, 14 3:11 5:9, 25 6:18 15:22 16:7, 10	<b>G</b>
<b>8</b>	<b>britton</b> [2] 1:17 2:8	<b>designate</b> [1] 10:14	<b>gathering</b> [1] 6:1
<b>800</b> [1] 7:22	<b>brought</b> [1] 15:2	<b>designated</b> [4] 7:11 9:7 10:16 12:22	<b>gave</b> [1] 3:18
<b>9</b>	<b>business</b> [2] 4:20 5:2	<b>designee</b> [1] 1:11	<b>give</b> [4] 3:17, 21 12:7 15:9
<b>A</b>	<b>C</b>	<b>determination</b> [1] 8:5	<b>golf</b> [1] 4:19
<b>a.m.</b> [2] 1:18 15:22	<b>call</b> [1] 8:18	<b>direct</b> [2] 7:16 12:16	<b>got</b> [3] 11:18 12:4 13:16
<b>accurate</b> [1] 12:18	<b>called</b> [2] 1:14 3:2	<b>directed</b> [4] 7:10, 15 9:5, 14	<b>H</b>
<b>action</b> [1] 16:13	<b>came</b> [2] 11:21 14:1	<b>district</b> [2] 1:1, 2	<b>half</b> [1] 13:16
<b>actually</b> [1] 8:13	<b>canton</b> [1] 13:10	<b>document</b> [2] 6:8, 21	<b>hand</b> [2] 5:7 16:14
<b>adjournment</b> [1] 16:11	<b>case</b> [2] 13:18, 21	<b>documents</b> [1] 6:1	<b>happened</b> [2] 9:22, 23
<b>adopt</b> [1] 5:10	<b>cause</b> [1] 16:7	<b>done</b> [1] 15:10	<b>head</b> [1] 4:19
<b>aforsaid</b> [2] 16:5, 7	<b>cautioned</b> [1] 16:6	<b>down</b> [4] 4:18 7:4, 25 12:13	<b>hereby</b> [1] 16:4
<b>afternoon</b> [1] 10:3	<b>certificate</b> [1] 16:1	<b>duly</b> [1] 3:3	<b>hereinafter</b> [1] 3:3
<b>agent</b> [4] 7:11 8:25 9:6, 14	<b>certified</b> [1] 3:3	<b>during</b> [2] 4:10 5:24	<b>hereunto</b> [1] 16:14
<b>ago</b> [3] 5:15 13:16 14:6	<b>certify</b> [3] 16:4, 10, 12	<b>dvds</b> [1] 7:22	<b>hilton</b> [1] 4:19
<b>agree</b> [1] 5:19	<b>cetera</b> [1] 10:4	<b>E</b>	<b>honest</b> [1] 14:8
<b>agreed</b> [1] 12:23	<b>change</b> [1] 15:14	<b>each</b> [1] 4:18	<b>hour</b> [1] 5:15
<b>agreement</b> [1] 12:24	<b>charge</b> [1] 12:24	<b>earlier</b> [2] 5:2 13:2	<b>howard</b> [13] 2:17 3:6, 9 6:16, 20, 24 7:2, 3 9:2, 10, 11 14:13 15:9
<b>alleggheny</b> [1] 16:3	<b>chuck</b> [1] 3:9	<b>early</b> [1] 6:6	<b>hundred</b> [1] 9:24
<b>alpha</b> [3] 13:9, 11, 13	<b>civil</b> [1] 1:15	<b>electric</b> [1] 4:14	<b>I</b>
<b>already</b> [1] 5:7	<b>come</b> [1] 4:15	<b>enough</b> [11] 8:9, 16, 21 10:10, 20, 24 11:13, 14, 18 12:4, 8	<b>identification</b> [1] 6:19
<b>another</b> [1] 11:17	<b>comfort</b> [1] 12:7	<b>equipment</b> [1] 7:12	<b>identified</b> [1] 5:20
<b>answer</b> [5] 3:19, 22 4:3 10:2 12: 11	<b>coming</b> [6] 10:21, 24 11:16, 17 12: 4 14:14	<b>erie</b> [30] 1:7, 11, 22 2:10, 21 4:6, 8, 16 5:2, 22 6:13 7:5, 9, 13, 15, 17 8: 25 9:6, 12, 14, 17 10:11 11:1, 3, 9 12:15, 21, 25 13:20, 25	<b>illig</b> [2] 1:17 2:8
<b>answering</b> [1] 6:14	<b>commencing</b> [1] 1:18	<b>eries</b> [1] 9:9	<b>inc</b> [4] 1:4, 7, 11 2:21
<b>answers</b> [3] 2:20 3:21 6:12	<b>commerce</b> [1] 2:4	<b>esquire</b> [1] 2:9	<b>indicating</b> [2] 5:11 6:10
<b>anybody</b> [1] 13:20	<b>commission</b> [1] 16:20	<b>essentially</b> [1] 3:18	<b>individual</b> [2] 14:24 15:7
<b>appearances</b> [1] 2:1	<b>commonwealth</b> [2] 16:2, 5	<b>et</b> [1] 10:4	<b>individuals</b> [1] 6:4
<b>appeared</b> [1] 16:5	<b>communicate</b> [1] 12:12	<b>event</b> [1] 16:13	<b>inform</b> [1] 7:20
<b>area</b> [1] 10:11	<b>communication</b> [2] 9:17, 19	<b>examination</b> [1] 3:5	<b>information</b> [5] 11:3, 10, 15, 20, 25
<b>arrived</b> [1] 12:3	<b>company</b> [1] 4:14	<b>except</b> [1] 5:20	<b>instructions</b> [1] 3:17
<b>assume</b> [1] 3:22	<b>completed</b> [1] 16:11	<b>exhibit</b> [2] 5:8 6:18	<b>interested</b> [1] 16:13
<b>attempt</b> [1] 4:3	<b>computer-aided</b> [2] 1:21 16:9	<b>exhibits</b> [1] 5:10	<b>interrogatories</b> [1] 2:20
<b>attention</b> [1] 15:3	<b>concluded</b> [1] 15:23	<b>expires</b> [1] 16:20	<b>interrogatory</b> [1] 6:12
<b>available</b> [2] 8:9 12:8	<b>constantini</b> [3] 1:16 16:4, 19	<b>explain</b> [1] 13:2	<b>interviewed</b> [1] 4:17
<b>aware</b> [2] 11:16 13:24	<b>contact</b> [4] 11:11 13:14, 21, 22	<b>F</b>	<b>inventory</b> [1] 10:6
<b>away</b> [1] 14:10	<b>contacts</b> [1] 11:24		<b>invoice</b> [1] 15:8
	<b>controlled</b> [1] 11:5		<b>isle</b> [12] 7:10, 15, 17 8:13, 16 9:13, 18, 20 10:7 11:5, 7 12:16
	<b>controller</b> [1] 6:5		<b>isles</b> [1] 9:9
	<b>coordinated</b> [1] 5:25		<b>issue</b> [1] 4:11
	<b>copy</b> [1] 6:7		<b>items</b> [1] 14:22
	<b>corporate</b> [1] 1:11		<b>J</b>



janssen <sup>(1)</sup> 2:3  
 jim <sup>(2)</sup> 4:23 6:4  
 jimmy <sup>(2)</sup> 14:1,10  
 job <sup>(1)</sup> 6:7  
 john <sup>(4)</sup> 1:10,14 2:13 3:1  
 johnson <sup>(7)</sup> 1:10,14 3:1,7 5:12 6:17,18  
 jones <sup>(2)</sup> 1:17 2:8

## K

keenan <sup>(1)</sup> 2:3  
 keep <sup>(2)</sup> 8:21,22  
 kevin <sup>(2)</sup> 11:12,22  
 kind <sup>(2)</sup> 4:17 14:14  
 kirtz <sup>(1)</sup> 11:22  
 knowledgeable <sup>(1)</sup> 5:21

## L

large <sup>(1)</sup> 15:6  
 last <sup>(1)</sup> 13:14  
 law <sup>(1)</sup> 1:17  
 learned <sup>(1)</sup> 5:24  
 letter <sup>(1)</sup> 15:5  
 letters <sup>(2)</sup> 14:21,22  
 lie <sup>(1)</sup> 14:9  
 little <sup>(1)</sup> 4:9  
 llp <sup>(1)</sup> 2:8  
 located <sup>(1)</sup> 7:12  
 locations <sup>(1)</sup> 10:16  
 long <sup>(1)</sup> 4:7

## M

macdonald <sup>(2)</sup> 1:17 2:8  
 machines <sup>(3)</sup> 7:20,24,25  
 made <sup>(2)</sup> 7:22 10:15  
 majority <sup>(1)</sup> 9:24  
 manufacture <sup>(1)</sup> 10:11  
 manufactured <sup>(1)</sup> 12:22  
 many <sup>(2)</sup> 7:20 9:8  
 marked <sup>(3)</sup> 5:7 6:16,19  
 market <sup>(1)</sup> 2:5  
 material <sup>(2)</sup> 10:19,21  
 memory <sup>(1)</sup> 14:2  
 might <sup>(3)</sup> 8:11,11 15:10  
 million <sup>(1)</sup> 7:22  
 minutes <sup>(1)</sup> 15:9  
 molder's <sup>(1)</sup> 12:24  
 monfort <sup>(2)</sup> 11:5,5  
 morning <sup>(4)</sup> 3:7,8 10:4 13:3  
 much <sup>(1)</sup> 15:11  
 myself <sup>(1)</sup> 6:4

## N

name <sup>(1)</sup> 3:9  
 need <sup>(6)</sup> 8:6 9:20,25 10:1,3,3  
 needed <sup>(3)</sup> 4:19 7:25 8:6  
 needs <sup>(6)</sup> 7:23 8:6,10 9:3 10:12 11:19  
 negotiate <sup>(1)</sup> 10:23  
 neighborhood <sup>(1)</sup> 14:4  
 nexpak <sup>(23)</sup> 7:9,10,11,12,15,16,18 8:22,24,25 9:6,7,13,15 10:6,14,17,20 11:4,10,25 12:23,25  
 nexpak's <sup>(1)</sup> 12:17  
 next <sup>(2)</sup> 10:13 12:15  
 nobody <sup>(1)</sup> 13:22  
 nope <sup>(1)</sup> 5:14  
 normally <sup>(2)</sup> 12:12 15:18

notary <sup>(2)</sup> 1:16 16:19  
 notice <sup>(5)</sup> 5:8,12 14:2,22 15:5

## O

occasion <sup>(1)</sup> 13:18  
 october <sup>(1)</sup> 16:20  
 office <sup>(1)</sup> 14:1  
 offices <sup>(1)</sup> 1:17  
 ohio <sup>(1)</sup> 13:10  
 okay <sup>(5)</sup> 4:25 6:16 7:2 11:16 14:14  
 older <sup>(1)</sup> 4:24  
 one <sup>(5)</sup> 2:4 5:24 10:1,3,3  
 only <sup>(4)</sup> 6:4 12:10 14:15,19  
 opportunity <sup>(2)</sup> 5:16 13:17  
 oral <sup>(1)</sup> 16:7  
 other <sup>(3)</sup> 4:18 5:15 12:10  
 out <sup>(1)</sup> 14:23  
 output <sup>(2)</sup> 8:3,4  
 outstanding <sup>(1)</sup> 14:23  
 over <sup>(2)</sup> 4:9 8:14  
 owed <sup>(1)</sup> 15:6  
 owner <sup>(2)</sup> 4:17,21

## P

p.c <sup>(1)</sup> 2:3  
 page <sup>(2)</sup> 5:17 7:4  
 paragraph <sup>(2)</sup> 7:8 10:13  
 parks <sup>(9)</sup> 6:9 7:1 8:11,24 9:4 14:12 15:12,17,20  
 part <sup>(1)</sup> 6:7  
 particular <sup>(2)</sup> 8:23 13:18  
 party <sup>(1)</sup> 7:6  
 pay <sup>(1)</sup> 12:21  
 pennsylvania <sup>(5)</sup> 1:2,22 2:10 16:2,15  
 per <sup>(1)</sup> 12:23  
 percent <sup>(1)</sup> 9:24  
 period <sup>(1)</sup> 4:11  
 personally <sup>(1)</sup> 16:5  
 pertaining <sup>(1)</sup> 1:15  
 piece <sup>(1)</sup> 12:23  
 pipeline <sup>(2)</sup> 10:24 11:13  
 plaintiff <sup>(4)</sup> 1:5 2:2,20 3:2  
 plastic <sup>(3)</sup> 7:17 12:17,21  
 plastics <sup>(14)</sup> 1:7,11 2:21 4:6,8,16 7:9,13 9:12 11:3 12:16,21,25 13:25  
 play <sup>(1)</sup> 4:19  
 point <sup>(1)</sup> 6:25  
 port <sup>(28)</sup> 1:7,11 2:21 4:6,8,16 5:2,22 6:13 7:5,9,13,15,17 8:25 9:6,9,12,14,17 11:1,3,9 12:15,21,25 13:20,25  
 position <sup>(1)</sup> 4:5  
 prepaid <sup>(1)</sup> 10:16  
 presence <sup>(1)</sup> 16:8  
 present <sup>(1)</sup> 2:12  
 president <sup>(4)</sup> 4:6,7,10,15  
 presque <sup>(13)</sup> 7:10,15,17 8:13,16 9:8,13,18,20 10:7 11:5,7 12:16  
 presses <sup>(1)</sup> 8:21  
 previous <sup>(1)</sup> 8:4  
 problems <sup>(1)</sup> 15:17  
 procedure <sup>(1)</sup> 1:15  
 product <sup>(2)</sup> 8:1 12:22  
 production <sup>(3)</sup> 7:12,19 9:7

products <sup>(2)</sup> 13:9,13  
 public <sup>(1)</sup> 16:19  
 pursuant <sup>(1)</sup> 12:24

## Q

question <sup>(4)</sup> 3:18,22 4:1 12:11  
 questions <sup>(3)</sup> 3:20 4:3 15:11

## R

railcar <sup>(1)</sup> 11:4  
 railcar's <sup>(2)</sup> 11:16 12:6  
 railcars <sup>(2)</sup> 11:13 12:1  
 rather <sup>(1)</sup> 14:21  
 read <sup>(2)</sup> 9:12 15:12  
 ready <sup>(1)</sup> 4:20  
 recall <sup>(2)</sup> 14:5,24  
 recalls <sup>(1)</sup> 14:16  
 receive <sup>(4)</sup> 7:9 9:13 11:3,9  
 received <sup>(3)</sup> 6:12 7:14 14:19  
 receiving <sup>(3)</sup> 10:6 14:16,20  
 recollection <sup>(2)</sup> 15:1,5  
 reduced <sup>(1)</sup> 16:8  
 related <sup>(1)</sup> 4:23  
 relative <sup>(1)</sup> 16:12  
 remember <sup>(2)</sup> 14:20 15:7  
 rephrase <sup>(1)</sup> 4:2  
 report <sup>(1)</sup> 8:2  
 request <sup>(2)</sup> 6:8 9:20  
 requested <sup>(1)</sup> 6:1  
 requirements <sup>(1)</sup> 7:19  
 resin <sup>(6)</sup> 7:10 8:9 9:13 10:11 12:8,21  
 response <sup>(2)</sup> 14:7,8  
 responsibility <sup>(4)</sup> 8:8 10:10,23 11:1  
 responsible <sup>(1)</sup> 10:20  
 retire <sup>(1)</sup> 4:20  
 review <sup>(2)</sup> 5:17 7:18  
 reviewed <sup>(1)</sup> 6:22  
 rich <sup>(1)</sup> 6:24  
 rules <sup>(1)</sup> 1:15  
 run <sup>(4)</sup> 4:20 8:6,7 12:9  
 running <sup>(5)</sup> 7:21 8:3,21,22 10:2  
 runs <sup>(2)</sup> 7:12 9:7

## S

sales <sup>(1)</sup> 10:17  
 same <sup>(2)</sup> 3:17 12:13  
 sat <sup>(1)</sup> 3:10  
 saw <sup>(1)</sup> 5:17  
 saying <sup>(1)</sup> 14:2  
 says <sup>(5)</sup> 7:8,14 10:14 12:15,20  
 schaeztle <sup>(3)</sup> 11:22 13:5,15  
 schedule <sup>(2)</sup> 8:17 10:19  
 scheduled <sup>(1)</sup> 11:18  
 scott <sup>(1)</sup> 2:9  
 second <sup>(1)</sup> 10:13  
 security <sup>(2)</sup> 13:9,13  
 see <sup>(3)</sup> 7:5,6 12:20  
 seeing <sup>(3)</sup> 14:24 15:1,7  
 seen <sup>(2)</sup> 5:12 6:21  
 sense <sup>(1)</sup> 4:3  
 sentence <sup>(5)</sup> 7:8 10:13 11:2 12:15,20  
 set <sup>(1)</sup> 16:14  
 set-off <sup>(1)</sup> 12:23  
 sheets <sup>(1)</sup> 10:6

shipments <sup>(5)</sup> 7:9,14,16 9:13 10:15  
 shipping <sup>(2)</sup> 7:6 10:15  
 show <sup>(1)</sup> 8:3  
 signature <sup>(1)</sup> 15:23  
 silo <sup>(1)</sup> 12:17  
 since <sup>(2)</sup> 3:10 5:16  
 sir <sup>(8)</sup> 4:12 5:4,6,18,23 12:19 13:12,19  
 six <sup>(1)</sup> 4:9  
 slow <sup>(1)</sup> 7:24  
 somebody <sup>(2)</sup> 4:19 10:19  
 sounds <sup>(2)</sup> 3:25 9:2  
 specific <sup>(3)</sup> 11:15 12:5 14:21  
 specified <sup>(1)</sup> 16:11  
 square <sup>(1)</sup> 2:4  
 start <sup>(1)</sup> 7:24  
 starting <sup>(1)</sup> 12:11  
 statement <sup>(2)</sup> 9:16 12:18  
 states <sup>(1)</sup> 1:1  
 stating <sup>(1)</sup> 15:5  
 stenotypy <sup>(1)</sup> 16:8  
 steve <sup>(4)</sup> 11:12,21,21,22  
 street <sup>(1)</sup> 2:5  
 stroupe <sup>(1)</sup> 2:9  
 stuff <sup>(1)</sup> 9:21  
 subheading <sup>(1)</sup> 7:5  
 submitted <sup>(1)</sup> 6:22  
 sum <sup>(1)</sup> 15:6  
 summary <sup>(2)</sup> 13:1 14:1  
 supposed <sup>(1)</sup> 7:20  
 sworn <sup>(2)</sup> 3:3 16:6

## T

teresa <sup>(3)</sup> 1:16 16:4,19  
 terminal <sup>(1)</sup> 11:5  
 terms <sup>(1)</sup> 10:15  
 testified <sup>(4)</sup> 5:1 9:19 10:5 14:15  
 testify <sup>(1)</sup> 16:6  
 testimony <sup>(2)</sup> 5:20 15:14  
 there's <sup>(2)</sup> 11:13 12:8  
 thereupon <sup>(2)</sup> 6:18 15:22  
 third <sup>(2)</sup> 7:4,8  
 three <sup>(4)</sup> 14:6,16,19,22  
 throughout <sup>(1)</sup> 5:11  
 thursday <sup>(1)</sup> 1:12  
 timing <sup>(1)</sup> 12:6  
 today <sup>(1)</sup> 9:25  
 tomorrow <sup>(2)</sup> 10:1,3  
 topics <sup>(2)</sup> 5:17,22  
 train <sup>(1)</sup> 11:4  
 transcript <sup>(2)</sup> 15:13,18  
 transcription <sup>(2)</sup> 1:21 16:9  
 transportation <sup>(1)</sup> 1:4  
 transposed <sup>(1)</sup> 8:24  
 tried <sup>(1)</sup> 13:2  
 truck <sup>(2)</sup> 9:25 12:17  
 trucking <sup>(5)</sup> 7:10 9:1,14 11:6 12:16  
 trucks <sup>(1)</sup> 8:14  
 true <sup>(1)</sup> 9:16  
 trust <sup>(1)</sup> 15:13  
 truth <sup>(1)</sup> 16:6  
 try <sup>(1)</sup> 4:3  
 tuesday <sup>(1)</sup> 11:17  
 two <sup>(7)</sup> 11:24 13:16,16 14:6,16,19,22

**typo** [1] 8:12

---

**U**

---

**undersigned** [1] 1:16

**understand** [2] 4:1,4

**understanding** [2] 10:8 14:18

**understood** [1] 3:23

**underwood** [1] 2:13

**united** [1] 1:1

**up** [2] 7:22,24

---

**V**

---

**valiantly** [1] 13:2

**verbal** [1] 11:11

**verification** [1] 6:25

**vs** [1] 1:6

---

**W**

---

**wait** [2] 3:20 12:14

**waive** [2] 15:18,20

**waived** [1] 15:23

**wanted** [1] 4:18

**way** [2] 7:4 9:23

**western** [1] 1:2

**whatever** [1] 12:6

**whereof** [1] 16:14

**whether** [1] 11:12

**whole** [1] 16:6

**will** [1] 3:17

**william** [1] 4:22

**without** [1] 16:11

**witkowski** [13] 3:11,18 4:22,23 5:

1,5,8 9:18 10:5 13:1 14:15 15:2,  
4

**witkowski's** [2] 5:19,25

**witness** [5] 3:2 8:15 15:16,19 16:

14

**work** [1] 4:13

**works** [2] 13:6,9

**worry** [2] 11:13 12:5

---

**Y**

---

**years** [4] 4:9 5:3 13:16 14:6

**yep** [1] 3:12



## **EXHIBIT O**

1 UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 - - -

4 CSX TRANSPORTATION, INC.,

5 Plaintiff,

6 vs.

7 PORT ERIE PLASTICS, INC.,

8 Defendant.

)  
)  
) Civil Action  
)  
) Case No.  
) 05-139 Erie  
)  
)

9 - - -

10 Deposition of JAMES WITKOWSKI

11 Corporate Designee of Port Erie Plastics, Inc.

12 Thursday, February 2, 2006

13 - - -

14 The deposition of JAMES WITKOWSKI, called as a  
15 witness by the Plaintiff, pursuant to notice and the  
16 Federal Rules of Civil Procedure pertaining to the  
17 taking of depositions, taken before me, the  
18 undersigned, Teresa Constantini Berardi, a Notary  
19 Public in and for the Commonwealth of Pennsylvania, at  
20 the law offices of MacDonald Illig Jones & Britton,  
21 LLP, 100 State Street, Suite 700, Erie, Pennsylvania  
22 16507-1498, commencing at 8:57 a.m. the day and date  
23 above set forth.

24 - - -

25 COMPUTER-AIDED TRANSCRIPTION BY  
MORSE, GANTVERG & HODGE, INC.  
ERIE, PENNSYLVANIA  
814-833-1799

- - -

PAGE 2

2

## 1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Janssen & Keenan, PC:  
 4 Charles L. Howard, Esquire  
 5 One Commerce Square  
 6 Suite 2050  
 2005 Market Street  
 Philadelphia, Pennsylvania 19103

7 On behalf of the Defendant:

8 MacDonald Illig Jones & Britton, LLP:  
 9 Richard J. Parks, Esquire  
 10 Scott Stroupe, Esquire  
 100 State Street, Suite 700  
 Erie, Pennsylvania 16507-1498

## 12 ALSO PRESENT:

13 John Underwood  
 14 John T. Johnson

PAGE 3

3

1 I-N-D-E-X

2 EXAMINATION BY:  
 3 Mr. Howard

PAGE:  
 4

## 4 WITKOWSKI DEPOSITION EXHIBIT NOS.:

PAGE:

5 1 - First Amended Notice of Deposition of	7
6 Corporate Designee Pursuant to Rule 30(b)(6)	
7 2 - Purchase orders	25
8 3 - Letter dated 7-13-00 to Nexpak from	33
9 Mr. Witkowski	
10 4 - Series of email correspondence dated 4-5-02	38
11 5 - Straight bill of lading dated 6-4-04	43
12 6 - Ten bills of lading	46
13 7 - Memo dated 11-19-04 to Mr. Witkowski from	47
14 Mr. Bartosik	
15 8 - Constructive placement notice	52
16 9 - Document entitled "Port Erie Plastics NA	59
17 124277 Incidentals as of 04-15-05.xls"	

PAGE 4

4

1 JAMES WITKOWSKI

2 Called as a witness by the plaintiff, having been  
 3 first duly sworn, as hereinafter certified, was  
 4 deposed and said as follows:

## 5 EXAMINATION

6 BY MR. HOWARD:

7 Q Good morning, Mr. Witkowski.

8 A Good morning.

9 Q My name is Chuck Howard, I represent CSX  
 10 Transportation, Inc. in this lawsuit.

11 We're here today to take your deposition as  
 12 a Rule 30(b)(6) designee of Port Erie Plastics.

13 Could you state your name and spell your  
 14 last name for the court reporter?

15 A James Witkowski, W-i-t-k-o-w-s-k-i.

16 Q And where do you currently reside?

17 A 7048 Stony Trace Lane, Erie, PA.

18 Q Have you been deposed in the past?

19 A Yes.

20 Q How many times.

21 A Once.

22 Q Do you recall what the nature of that case  
 23 was, what that case was about?

24 A Not really, no.

25 Q How long ago was it?

PAGE 5

5

1 A Like, four or five years ago.

2 We did something with another customer. I  
 3 can't remember what it was exactly. I think it was  
 4 with a nail company.

5 Q Did it involve Port Erie Plastics?

6 A Yes.

7 Q Did it involve a claim for demurrage?

8 A No.

9 Q Before we really get started, I just  
 10 thought I would give you a few instructions. You  
 11 probably heard these the last time you were deposed,  
 12 but I just want to go over them.

13 It's essentially a question and answer  
 14 session. I ask the questions and, to the best of  
 15 your knowledge and recollection, you provide the  
 16 answers.

17 I don't want you to guess at anything. If  
 18 you have to make a reasonable estimate, then let us  
 19 know that that's what you're doing.

20 If I ask a question and if you answer it,  
 21 I'll assume that you understood it.

22 Is that fair?

23 A Yes.

24 Q If I ask a question and you don't

25 understand it, please don't answer the question. Ask



SHEET 2 PAGE 6

6

1 me to repeat it or rephrase it in a way that you do  
2 understand it.

3 My voice drops, and if you don't hear a  
4 question, ask me to repeat it.

5 You're currently employed by Port Erie  
6 Plastics?

7 A Yes.

8 Q In what capacity?

9 A Purchasing manager.

10 Q And how long have you been purchasing  
11 manager for Port Erie?

12 A Ten years.

13 Q How long have you been employed by  
14 Port Erie Plastics?

15 A 27, 28.

16 Q So you were employed as a purchasing  
17 manager during the time period in which these  
18 demurrage charges arose?

19 A Yes.

20 Q What are the job responsibilities of a  
21 purchasing manager at Port Erie?

22 A Oversee the other personnel that work in  
23 there, verifying that we're not paying excessive  
24 charges for anything, and just overall running the  
25 purchasing department.

PAGE 8

8

1 BY MR. HOWARD:

2 Q Mr. Witkowski, the court reporter has  
3 handed you a document we've marked as Exhibit 1. It's  
4 CSX's First Amended Notice of Deposition of Corporate  
5 Designee.

6 Have you seen this document before?

7 A I don't believe so.

8 MR. PARKS: I don't think you have.

9 Q So would it be fair to say you have not  
10 reviewed the list of topics and items that appear on  
11 page 2 of the document?

12 A Correct.

13 Q You're being produced here today under a  
14 rule that's known as Rule 30(b)(6), and the way that  
15 works is, we provided to your counsel a list of topics  
16 that we wanted to inquire about today, and you have  
17 been produced as one of the people most knowledgeable  
18 on the topics that are listed on page 2.

19 I would like you to spend a few minutes and  
20 read through these, and let me know when you're  
21 finished, and then I have some questions for you.

22 A Okay.

23 Q As you read through those, did you  
24 understand that a reference to "the defendant" was a  
25 reference to "Port Erie Plastics"?

PAGE 7

7

1 Q And how many other employees do you  
2 oversee?

3 A Two.

4 Q And who are they?

5 A They'd be Lisa Grassi, G-r-a-s-s-i, and  
6 Mike Maille, M-a-i-l-l-e.

7 Q During the time period in which these  
8 demurrage charges -- and I guess we should be on the  
9 same page. We are talking the 2002-2003 time period  
10 for these charges.

11 Is that your understanding?

12 A Yes.

13 Q Who at Port Erie did you supervise during  
14 that time period?

15 A Would have been a gentleman by the name of  
16 Rich Wilson.

17 I don't remember if -- I don't think there  
18 was -- I think that was it at that time. I don't  
19 think Lucia was there then.

20 MR. HOWARD: Rich, I have copies of  
21 everything for you.

22 This is the deposition notice. Mark that  
23 as Exhibit 1.

24 (Thereupon, Witkowski Deposition Exhibit  
25 No. 1 was marked for identification.)

PAGE 9

9

1 A Correct.

2 Q And references to "the plaintiff" was to  
3 "CSX"?

4 A CSX, correct.

5 Q Were there any of these items that you  
6 believe you do not have -- you're not the person at  
7 Port Erie with the most knowledge?

8 A Yeah. You had -- which one was it in  
9 here?

10 You have -- the agreements are No. 4,  
11 "Agreements or contracts between the defendant and  
12 shippers of the railcars which accrued demurrage  
13 charges by the plaintiff," and we didn't have anything  
14 to do with the shipping of railcars, so I don't know a  
15 whole lot of history behind that.

16 Q Well, based on your answer that Port Erie  
17 didn't have anything to do with the shipping of the  
18 railcars, would it be fair to say that there's no one  
19 at Port Erie that would have this information?

20 A We did not ship the railcars. That was  
21 handled by Nexpak with BP.

22 Q Let's look at No. 4.

23 Were there any contracts between Port Erie  
24 and the shippers of the railcars?

25 A No.

PAGE 10

10

1 Q Were there any other items on this list  
2 that jumped out at you as something that perhaps  
3 you're not the person most knowledgeable?

4 MR. PARKS: Jim, 1 duplicates 4.

5 A No.

6 Q Your counsel made a good point, that 1  
7 duplicates 4.

8 In No. 4, what is your understanding of the  
9 term "shippers"?

10 A I'm assuming you meant that we were  
11 responsible for, you know, authorizing the shipment of  
12 the railcars.

13 Q I'm sorry. Let me rephrase the question.

14 A It says, "Agreements or contracts between  
15 the defendant," which would be us, "and the shippers,"  
16 which would be, I'm assuming, BP shipping it by  
17 however they decided to do it.

18 We don't have anything to do with that.

19 Q And then No. 1, that's about "Agreements  
20 and contracts between" -- what is your understanding?

21 A Between us and CSX.

22 We did not have a contract with them.

23 Q So No. 1 and No. 4, essentially, if I were  
24 to ask you about these topics, your answer would be  
25 that there are no agreements --

PAGE 12

12

1 He was the one that was doing it at that time.

2 MR. PARKS: Well, tell him what time frame  
3 you're talking about.

4 A Oh, Brian Fahey left us, like, a year and a  
5 half ago, or something.

6 Prior to that, he was involved with trying  
7 to work this out.

8 Q Let me backtrack again.

9 I don't remember exactly when we served  
10 Port Erie with document requests, but it would have  
11 been in the last eight or nine months, so Mr. Fahey  
12 would not have involved in gathering documents  
13 responsive to the request?

14 A No. That would have been prior stuff where  
15 this had gone back into the 2003-2004 time frame then.

16 Q But in response to our document request,  
17 would Mr. Johnson have been the person coordinating  
18 that effort --

19 A Correct.

20 Q -- and not you?

21 A Correct.

22 Q All right. No. 10 refers to "Responses to  
23 interrogatories directed to the defendant in this  
24 case."

25 What is your understanding of that phrase?

PAGE 11

11

1 A No.

2 Q -- concerning either of those topics?

3 A Right. We had no agreements with either  
4 CSX or BP.

5 Q Okay.

6 Is there anyone else at Port Erie who you  
7 think might have superior knowledge with respect to  
8 any of the topics on this page?

9 A No.

10 Q Your counsel produced to CSX documents  
11 responsive to our request.

12 Did you have an opportunity to review those  
13 documents before they were produced?

14 A I have seen some documents. I'm not sure  
15 if I've seen everything you're talking about.

16 Q Were you involved at all in gathering those  
17 documents?

18 A We gave information of what we knew to  
19 Mr. Parks, yes.

20 Q And "we" is whom?

21 A That would have been all the people at  
22 Port Erie, Mr. Johnson and myself.

23 Q And was there someone at Port Erie who was  
24 in charge or coordinated that effort?

25 A Would have been Mr. Johnson or Mr. Fahey.

PAGE 13

13

1 A What are you calling an interrogatory?

2 Q CSX served a series of questions, written  
3 questions, on your counsel, and they're called  
4 interrogatories, they're questions about the case, a  
5 variety of the topics, and we received responses to  
6 those interrogatories.

7 MR. HOWARD: Rich, just for the record, I  
8 was looking at them today.

9 I don't believe they were ever verified, so  
10 there's really nobody that signed off on them  
11 from --

12 MR. PARKS: No, they were not verified.  
13 There were compiled from the information  
14 contained.

15 MR. HOWARD: Okay.

16 BY MR. HOWARD:

17 Q Do you recall -- and I have it here, but I  
18 just want to know if you have a recollection.

19 Do you recall seeing a series of formal  
20 answers to the questions that we --

21 A No.

22 Q Do you know if anyone else at --

23 A I don't know if they did or not.

24 Q Later on, I'll have the actual  
25 interrogatories and you can see them and we can

SHEET 3 PAGE 14

14

1 confirm that you've never seen them before.

2 How long has Port Erie been in business?

3 A 53 years.

4 Q And what is the business of Port Erie  
5 Plastics?

6 A It's a custom injection molder.

7 Q Does Port Erie produce a product?

8 A We produce various products for various  
9 customers.

10 We're into home medical stuff.

11 We're into, at one time, toys.

12 We're into plumbing products.

13 Pretty much we will make whatever our  
14 customer want us to if we have the capabilities.

15 Q And I would say the thing that's common to  
16 all these products is that they're made out of some  
17 type of plastic?

18 A Plastic, correct.

19 Q What did you do, if anything, to prepare  
20 for this deposition?

21 A Basically a mental note of what I remember  
22 happening in the past, just trying to think if I could  
23 remember the entire scenario, how we used to deal  
24 business with Nexpak.

25 Q Did you review any documents?

PAGE 16

16

1 Nexpak and Port Erie?

2 A We molded DVD cases for them.

3 Q And when did Port Erie acquire that  
4 particular customer or that contract or whatever  
5 governed that business relationship?

6 A 2000-2001, somewhere in that time frame.

7 Q And I understand that there's no longer a  
8 business relationship between Port Erie and Nexpak?

9 A No.

10 Q In fact, it's my understanding that Nexpak  
11 is in bankruptcy?

12 A They were. I believe they've come out  
13 already.

14 MR. PARKS: Their plan of reorganization  
15 was confirmed by the court, Northern District of  
16 Ohio, Canton.

17 BY MR. HOWARD:

18 Q Port Erie is not doing any business today  
19 with Nexpak?

20 A No.

21 Q When did that business relationship end?

22 A Late 2004. I believe it was 2004.

23 Q Explain for me how the Plastek -- give me  
24 some more detail on how the Nexpak and the Plastek  
25 relationship worked in terms of getting the --

PAGE 15

15

1 A My affidavit that I have there

2 (indicating), and I looked through a couple notes and  
3 stuff I had made in this entire process, but I really  
4 didn't go through anything.

5 Q Did you speak with anyone other than your  
6 counsel in getting ready for this deposition?

7 A No.

8 Q You made reference to an affidavit.

9 Do you have that with you?

10 MR. PARKS: It's not filed yet of record.

11 We're not going to allow that to be produced.

12 MR. HOWARD: Okay.

13 MR. PARKS: He does have an affidavit that  
14 has been prepared. It's not filed of record or  
15 anything else.

16 MR. HOWARD: I couldn't remember whether  
17 you had attached one.

18 MR. PARKS: No.

19 MR. HOWARD: So I didn't know if it was  
20 something I had seen before or not.

21 MR. PARKS: No, it's not a pleading of  
22 record yet.

23 BY MR. HOWARD:

24 Q You've made references to Nexpak.

25 What was the business relationship between

PAGE 17

17

1 MR. PARKS: Plastek?

2 MR. HOWARD: I'm sorry.

3 BY MR. HOWARD:

4 Q The Nexpak and Port Erie Plastics  
5 relationship worked.

6 A We were a molder for Nexpak, we produced  
7 the cases, and then shipped them to their customers.

8 Q Who supplied the raw material for the  
9 cases?

10 A Nexpak purchased it and would supply it to  
11 us.

12 Q What did you charge Nexpak for your  
13 services?

14 A We charged them for molding, which was a  
15 number that based on our internal costs, and then we  
16 were -- had to include in our costs a number of what  
17 Nexpak wanted us to charge them back for resin.

18 Q I'm not quite sure I understand your  
19 answer.

20 A Our costs of a DVD case included our  
21 molding, and then Nexpak told us that we had to  
22 include a cost for the resin in there even though we  
23 never purchased it.

24 Q So Nexpak was the supplier of the resin to  
25 Port Erie?

PAGE 18

18

1 A Correct.

2 Q Do you know where Nexpak got the resin?

3 A BP.

4 I'm assuming it was down in Texas, but I'm

5 not sure.

6 Q Who arranged for the transportation of the

7 resin from BP to Erie, Pennsylvania?

8 A I'm assuming it was either BP or Nexpak.

9 Q Did --

10 MR. PARKS: One second.

11 Don't assume. If you don't know, you don't

12 know.

13 A It was not Port Erie, is what I can tell

14 you for sure.

15 Q Did Port Erie have any contact with BP

16 concerning the resin product?

17 A We had contact with the sales rep only

18 because he would check on his product.

19 Q And when the sales rep -- were these

20 contacts initiated by a BP sales rep?

21 A Yes.

22 Q And what was he checking on?

23 A Just to see how the material was running,

24 if we had any concerns.

25 Q Did Port Erie have any contact with BP

PAGE 20

20

1 Q What was your understanding of what Nexpak

2 did with the information that you sent to it

3 concerning the number of machines you were running?

4 A They would verify that their orders were

5 being met, and if they needed to increase or decrease

6 machines to meet their customers requirements.

7 And from there, they would probably

8 determine if they had enough material in the system

9 for us to produce.

10 Q Would Nexpak determine how many machines

11 Port Erie would be running at any given time?

12 A For their product, yes.

13 Q Are you familiar with an entity known as

14 Plastek?

15 A Yeah.

16 Q What is your understanding of Plastek's

17 business?

18 A They are a molder of plastic products.

19 Q Do you know if they do anything else other

20 than mold?

21 A No, they --

22 Q Do you have an understanding of the

23 different carriers, rail carriers, that moved the

24 freight from the BP facility to Erie, Pennsylvania?

25 Do you know what carriers they were --

PAGE 19

19

1 concerning the shipment of the resin?

2 A No.

3 Q Did Port Erie have any contact with Nexpak

4 concerning the shipment of the resin?

5 A No.

6 Q Who decided when a shipment of resin would

7 leave the BP facility?

8 A That was worked out between Nexpak and BP,

9 based on the number of machines that we were running.

10 Q How would Nexpak or BP know at any given

11 time how many machines you were running?

12 A We daily updated them as far as the

13 production off of each machine and how many machines

14 we were producing.

15 Q And how were those daily updates

16 communicated to -- well, strike that.

17 Were those daily updates communicated to

18 both Nexpak and BP?

19 A No, only Nexpak.

20 Q Is that by phone, by fax, email?

21 A Could be by all of them.

22 Q Running at full capacity, how many machines

23 would you be running?

24 A At one time, we were running 20 presses.

25 That was not a constant number, though.

PAGE 21

21

1 A No.

2 Q -- other than CSX?

3 A No.

4 Q Is it your understanding that CSX carried

5 the freight from BP all the way to Erie?

6 A Yes.

7 Q So you're not aware of any other carrier

8 involvement?

9 A No.

10 Q When the resin arrived at the Port Erie

11 facility, was it accompanied by a bill of lading?

12 MR. PARKS: Well, Port Erie does not have a

13 rail facility.

14 MR. HOWARD: Okay.

15 MR. PARKS: Are you talking about

16 Presque Isle Trucking?

17 MR. HOWARD: Hold on a minute.

18 Just strike the last question.

19 MR. PARKS: I have a horrible time keeping

20 those straight, too.

21 MR. HOWARD: I couldn't remember exactly,

22 so I'll just strike the question, I'll ask

23 again.

24 BY MR. HOWARD:

25 Q When the resin arrived at the Port Erie



SHEET 4 PAGE 22

22

PAGE 24

24

1 facility, was it accompanied by a bill of lading?

2 A No.

3 Q And when it arrived at the Port Erie  
4 facility, who brought it to the Port Erie facility?

5 A Presque Isle Trucking.

6 Q Did Port Erie have a relationship with  
7 Presque Isle Trucking?

8 A We used them to bring the product to our  
9 facility, yes.

10 Q And where was Presque Isle bringing the  
11 product from?

12 A Wherever the railcars were put. I don't  
13 know.

14 Q You understand that at some point this  
15 product was shipped by rail; correct?

16 A Correct.

17 Q But it arrived at your facility by truck.

18 Do you know where it was transferred from  
19 the railcar to the truck?

20 A One place used to be Mount Fort Terminal,  
21 but I am not sure if all the material came through  
22 there.

23 Q Do you know where that transfer would have  
24 been made during the 2002-2003 time period?

25 A No.

1 resin, they would literally, you know, contact us in  
2 the morning and we would let them know whether we  
3 needed resin brought over.

4 Q Who would contact who?

5 A Presque Isle Trucking would contact our  
6 inventory -- would contact Port Erie's inventory  
7 department.

8 Q What would Presque Isle ask your inventory  
9 department?

10 A "Do you need a truckload of resin today?"

11 Q During the 2002-2003 time period, what  
12 Port Erie employees were in your inventory department?

13 A The ones -- that would have been  
14 David Nickle and Mel Fields, but I don't remember the  
15 other people.

16 Q Are they still employed by Port Erie?

17 A Yes.

18 Q In what capacity?

19 A Inventory.

20 Q Was this communication between Presque Isle  
21 and Port Erie always initiated by Presque Isle, or did  
22 your inventory department ever call Presque Isle and  
23 say, "We need more resin?"

24 A I don't know.

25 Q Who would know?

PAGE 23

23

PAGE 25

25

1 Q Did Port Erie have anything to do with the  
2 scheduling of the shipments from BP to Pennsylvania?

3 A No.

4 Q Was Port Erie ever notified when those  
5 shipments left the BP facility?

6 A No.

7 Q When did Port Erie receive notification  
8 that shipments had arrived in Erie?

9 A We would receive a weekly inventory from  
10 Presque Isle Trucking, and on there it would list what  
11 cars he had.

12 Q And what was the purpose of having that  
13 weekly inventory sent to Port Erie -- strike that  
14 question.

15 What use did Port Erie make of that  
16 inventory?

17 A It was used for Port Erie and Nexpak, just  
18 to see what inventory was available for production.

19 Q Do you know whether that weekly inventory  
20 was also supplied to Nexpak?

21 A Yes, it was.

22 Q How did Presque Isle know when Port Erie  
23 needed a shipment of resin?

24 A Presque Isle was in contact with our  
25 inventory department, and if we felt we needed more

1 A I don't know.

2 Either Dave or Mel.

3 Q What role, if any, would Nexpak have had in  
4 ordering resin from Presque Isle?

5 A Nexpak ordering the resin from  
6 Presque Isle?

7 Q Yes. Let me back up a little bit.

8 We just talked about Presque Isle  
9 contacting the Port Erie inventory department to see  
10 if Port Erie needs more product brought it.

11 A More material, correct.

12 Q Do you know if Nexpak had any involvement  
13 in that type of communication?

14 A I don't know if they did or not.

15 Q Did Nexpak keep one of its own company  
16 representatives at the Port Erie facility?

17 A No.

18 Q Who at Nexpak did you have direct  
19 communications with concerning the supply of the  
20 resin?

21 A I would have been Kevin Kirtz, and at  
22 one time it could have been Steve Schaezle.

23 MR. HOWARD: Mark this as Witkowski 2.  
24 (Thereupon, Witkowski Deposition Exhibit  
25 No. 2 was marked for identification.)

PAGE 26

26

1 BY MR. HOWARD:

2 Q Mr. Witkowski, the court reporter has  
3 handed you a document that we've marked as Exhibit 2.

4 Can you identify this document?

5 A It's a purchase order.

6 Q And it's a purchase order submitted by  
7 whom?

8 A By me.

9 Q To whom?

10 A Nexpak.

11 Q What is being ordered on this purchase  
12 order?

13 A Resin and film.

14 Q And is the resin that's being ordered the  
15 resin that we've been talking about since we started  
16 this morning?

17 A Correct.

18 Q And would those be the first two items  
19 listed in the purchase order, the Amoco 8941 and the  
20 Amoco 8931?

21 A Correct.

22 Q Now, this particular purchase order is  
23 dated March of 2004.

24 Do you see that up in the upper right-hand  
25 corner?

PAGE 28

28

1 would have been prepared by Port Erie and sent to  
2 Nexpak during the time period we're talking about,  
3 2002-2003?

4 A These purchase orders not sent to Nexpak.

5 These purchase orders were for internal use  
6 of Port Erie to receive the material into our system.

7 Q This purchase order identifies Nexpak as a  
8 vendor.

9 Nexpak did not sell this material?

10 A We had a relationship with them that after  
11 we produced the product, we would invoice them for the  
12 finished product, and they would debit us -- it's  
13 money they would owe us -- they would debit us our  
14 account based on the pricing they told us to use for  
15 the material.

16 This was a purchase order designed so that  
17 we could get the material into our system and generate  
18 the correct pricing when we sold the product to  
19 Nexpak, and allow our inventory MRP system to generate  
20 the requirements.

21 Q At the bottom of the lower right-hand  
22 corner of the document, it gives a grand total for  
23 this order. It's over a million dollars.

24 Now, what does that represent; what is  
25 Port Erie paying a million dollars for?

PAGE 27

27

1 A Correct.

2 Q So this particular resin would not have  
3 been on a railcar at issue in this lawsuit; would you  
4 agree with that characterization, since we're talking  
5 about railcars that arrived in Erie 2002-2003?

6 A This material was received in bulk trucks  
7 from Presque Isle.

8 Q But this is a purchase order that, and  
9 correct me if I'm wrong, was sent by Port Erie to  
10 Nexpak?

11 A Correct.

12 Q In March of 2004?

13 A Correct.

14 Q So this would not have been shipped in  
15 2002-2003?

16 I mean, that's obvious.

17 A Correct, yeah.

18 Q Were purchase orders of this type prepared  
19 during the relevant time period by Port Erie and  
20 sent --

21 A This was --

22 Q No, hold on. You know what my question is,  
23 so you're doing what's natural, but let me finish the  
24 question.

25 Is this the type of purchase order that

PAGE 29

29

1 A For the items on here as we put them into  
2 our system.

3 I mean, we needed something on our system  
4 to be able to receipt the material received from  
5 Presque Isle Trucking, and we had to have that in our  
6 inventory system at a dollar value when we would  
7 invoice Nexpak after we produced the product, and the  
8 number of the material cost had to match what Nexpak  
9 told us to use because they would debit us that amount  
10 per pound.

11 Q At what point in this whole process did  
12 Port Erie invoice Nexpak?

13 A After the product was produced off the  
14 machines.

15 Q And I'm sure you've already answered this  
16 and I didn't understand it, but what does this price  
17 that appears on Exhibit 2, where does that fit into  
18 the final invoice?

19 A This is the pricing that Nexpak told us to  
20 use in our costing when we would do our final thing.

21 We had a material cost -- in this case, it  
22 was 57 cents per pound for the one resin -- that we  
23 had to include in our final cost to them and our  
24 molding cost, put those two together.

25 We would invoice Nexpak for that, and then



SHEET 5 PAGE 30

30

1 rather than paying us a check for that amount, they  
2 would deduct this amount from us, the material costs.

3 Q So --

4 A They still owned the resins, so they  
5 would -- they weren't going to let us, you know,  
6 double do something here.

7 Q Would the invoice that actually was sent to  
8 Nexpak, would there be a way to connect that to this  
9 internal document?

10 A I don't have anything to do with invoicing,  
11 so I'm not sure, other than our material had a cost on  
12 the system based on what we would have ordered it at  
13 internally.

14 Q So the material that's being -- I'm going  
15 to say sold, but I understand that this is not a  
16 record -- based on what you've told me, this is not a  
17 record of a sale.

18 A Right.

19 Q The material cost was just little over a  
20 million dollars --

21 A Yes.

22 Q -- for the total thing, and then you're  
23 paying 57 cents a pounds for, it looks like a million  
24 pounds of one type of resin and a million pounds of  
25 another?

PAGE 32

32

1 Q Was a document like this created for  
2 every -- I can't use the word "purchase" after what  
3 you told me -- for every transfer of material?

4 A We did these on a monthly basis. That's  
5 why it says "Nexpak 0304."

6 We would -- every month, we would have a  
7 purchase order, and next month would have been "0404."

8 Q On the first page of the exhibit, there are  
9 a lot of handwritten notes.

10 A Correct.

11 Q What is going on there; do you know?

12 A Those are the dates with the pounds that  
13 were received.

14 Q Received where?

15 A Basically into our facility.

16 Q And do you recognize the handwriting there?

17 A No. I mean --

18 Q It's not yours?

19 A No.

20 Q Would it be your understanding that would  
21 be somebody in your inventory department?

22 A It would have been -- it could have been  
23 someone else that was doing the receipts at that time,  
24 yes.

25 I don't know whose that is. I don't know

PAGE 31

31

1 A Correct.

2 Q I'm still just having a little trouble  
3 understanding what was finally submitted to Nexpak in  
4 terms of an invoice.

5 You've talked about the cost, and I  
6 apologize for not understanding.

7 A Well, you have a molding cost.

8 In other words, you run the machine and put  
9 the labor into it and give them a final product.  
10 Okay? You have that cost and then you have the  
11 material cost.

12 Those have to go together, and then you  
13 give them a final selling price, which is what we  
14 would invoice them for.

15 They would not pay our invoices at the  
16 final selling price. They would deduct the material  
17 cost back out of it because they already owned the  
18 material.

19 Q All right. So, essentially, they were just  
20 charged for your --

21 A Machine.

22 Q -- services in molding --

23 A Correct.

24 Q -- the resin?

25 A Correct.

PAGE 33

33

1 whose that is.

2 MR. HOWARD: Mark that as Witkowski 3.

3 (Thereupon, Witkowski Deposition Exhibit

4 No. 3 was marked for identification.)

5 BY MR. HOWARD:

6 Q I'm going to back up just a little bit  
7 until I have a real good understanding of the final  
8 invoice that Port Erie Plastics sent to Nexpak.

9 Did you send those invoices to Nexpak on a  
10 monthly basis?

11 A I don't know how they were generated. I  
12 had nothing to do with invoicing.

13 Q Do you know whether the invoice identified  
14 a specific number of DVD cases?

15 A It would have a quantity shipped and  
16 Nexpak's number on it.

17 All of our invoices are like that.

18 Q And that would be a quantity shipped from  
19 whom to whom?

20 A From Port Erie to whoever Nexpak needed it  
21 shipped to at that time.

22 Q That would be one of Nexpak's customers?

23 A Correct.

24 Q The invoice that was sent from Port Erie to  
25 Nexpak would have been for, essentially when all the

PAGE 34

34

1 dust settled, Port Erie's costs in making these DVD  
2 cases?

3 A There was a cost for us to manufacture it  
4 as well as --

5 Q Manufacturing cost, not material cost.

6 A It had -- no, it was everything in there,  
7 material and manufacturing.

8 Q I think you said that there was a debit  
9 back to --

10 A We -- and, again, I am not --

11 Q -- Port Erie?

12 A -- into accounting as far as that went.

13 They would take our invoice, from my  
14 understanding, and debit the material cost back out  
15 based on what they knew the material was in that  
16 product.

17 Q So when the invoice was paid by Nexpak to  
18 Port Erie, Port Erie would just receive the molding  
19 cost?

20 A I don't know. I do not do invoicing or  
21 accounting.

22 Q Do you know if Mr. Johnson would know?

23 A Yes.

24 Q All right. Let's take a look at Exhibit 3,  
25 Witkowski 3.

PAGE 35

35

1 Could you identify this document for us,  
2 please?

3 A Yes.

4 It's a letter that was sent by me to Nexpak  
5 in July of 2000.

6 Q Is that your signature?

7 A Yes.

8 Q And the first sentence says, "I just wanted  
9 to confirm my understanding of the arrangement we have  
10 in place with regards to the shipment of resins to  
11 Port Erie Plastics since the situation is a little  
12 unique."

13 What was unique about the situation?

14 A Usually when Port Erie is molding a  
15 product, we purchase the resin.

16 In this case, we did not purchase the resin  
17 to bring in.

18 Q Why did Port Erie have this type of  
19 relationship with Nexpak?

20 A This is what Nexpak wanted.

21 Q Do you know why this is what they wanted?

22 A No.

23 Q Did Port Erie have other suppliers of resin  
24 that you would make -- use for injection molding?

25 A Other than BP?

PAGE 36

36

1 Q Other than Nexpak.

2 A Nexpak was my customer. They wanted to  
3 control the resin that way.

4 Q Did this particular agreement that's  
5 memorialized here on Exhibit 3, did this govern all  
6 shipments of resin to Port Erie Plastics?

7 A For Nexpak.

8 Q For Nexpak.

9 That's a "yes"?

10 A Yes.

11 Q Okay.

12 The second sentence is, "We will be  
13 operating with the understanding that ownership of the  
14 resin will not transfer until the material is  
15 delivered to our facility in Harborcreek, PA."

16 This transfer of ownership, did that occur  
17 when it was put into the -- I understand that this  
18 stuff was stored in silos at Port Erie?

19 A Correct.

20 Q Is your understanding that Port Erie now  
21 owned the resin?

22 A After it was delivered by Presque Isle  
23 Trucking, yes.

24 Q So once it goes into the silo, then  
25 Port Erie owns it?

PAGE 37

37

1 A Yes.

2 Q But there had been no exchange of dollars  
3 for that product as of that point yet; is that  
4 correct?

5 A Correct, correct.

6 Q And that wasn't going to occur -- no money  
7 would change hands until Port Erie had used the resin  
8 to make the DVD cases?

9 A That would be my understanding, yes.

10 Q And the last sentence of the first  
11 paragraph says, "Therefore, ownership and all risk of  
12 loss will remain with Nexpak, and or the shipping  
13 companies, while the resin is in transit and or in  
14 storage at the Plastek storage facility."

15 The phrase "risk of loss," what is your  
16 understanding of what was intended there?

17 A Anything that would happen to the resin was  
18 not our responsibility until it hit our silo.

19 Q Do you recall, during the relationship that  
20 Port Erie had with Nexpak, whether there had been  
21 losses of resin while in transit?

22 A I don't know of any.

23 Q And there's a reference there to "the  
24 shipping companies."

25 What is your understanding of who the

SHEET 6 PAGE 38

38

1 shipping companies are?

2 A Whoever Nexpak had determined to ship the  
3 product in.

4 Q So that's a reference to the carriers?

5 A Yes.

6 Q And "the Plastek storage facility," where  
7 is the Plastek storage facility?

8 A I believe that to be the Mount Fort  
9 Terminal.

10 (Thereupon, Witkowski Deposition Exhibit

11 No. 4 was marked for identification.

12 BY MR. HOWARD:

13 Q I've handed you what we've marked as  
14 Witkowski 4.

15 Do you recognize this document?

16 A Yeah.

17 Q It looks like there are two emails here.

18 The first one is to you and a LaDonna Radig.

19 Who is LaDonna Radig?

20 A I believe she was a salesperson for another  
21 material company.

22 Q And then there are some cc's at the top.  
23 Beth Clapper, does that name ring a bell?

24 A She was at Nexpak.

25 Q And what did she do for Nexpak?

PAGE 40

40

1 Do you recall receiving this email?

2 A No, but I must have.

3 Q You don't doubt that you received it?

4 A Yeah, I must have received it, yes.

5 Q Okay.

6 The text of the email is, "The Nexcase

7 Case's will be molded out of a homopolymer from

8 Atofina. I want to move 3 bulk trucks from East

9 Canton initially to PEP to support your startup

10 production."

11 What's your recollection of what that's all  
12 about, that particular sentence?

13 A They had another mold that they wanted us  
14 to run, and they needed to get material to us quickly.

15 Q And then it goes on to say, "Beyond that we  
16 will need to move railcars to your local terminal just  
17 like we do with BP."

18 Do you know what the reference to "local  
19 terminal" is?

20 A Mount Fort Terminal.

21 Q And the phrase "just like we do with BP" is  
22 essentially -- it sounds like Nexpak has said it wants  
23 you to set up the same type of arrangement for getting  
24 this material that you did with BP?

25 A We did not schedule the material with BP.

PAGE 39

39

1 If you know.

2 A I don't know.

3 Q What about Steve Schaetzle?

4 A He was the guy at Nexpak that would  
5 schedule the material.

6 Q And by "schedule the material," you mean  
7 scheduling the arrival of the resin at --

8 A Ordering the resin.

9 Q Ordering the resin.

10 How about Dennis Summers?

11 A I believe he was plant manager for Nexpak.

12 Q And what is Atofina?

13 A A material company.

14 Q Did Atofina supply material to Port Erie  
15 for Nexpak?

16 A They sold material to Nexpak that Nexpak  
17 supplied to us.

18 Q For the same DVD cases, same types of  
19 products?

20 A A different style, yes.

21 Q Let's look at the email at the bottom.

22 It's from Mr. Schaetzle, I think you've  
23 identified as the person at Nexpak who scheduled the  
24 deliveries of the resins or the orders of the resin.  
25 It's dated Friday, April 5th, 2002.

PAGE 41

41

1 I mean, that was -- again, Mr. Schaetzle

2 would schedule the material into the terminal that

3 would allow us to pull the material out.

4 Q But the Atofina material was going to go to  
5 the same place that the BP material was going to go  
6 to, Mount Fort?

7 A Correct.

8 Q Is that your understanding?

9 A Yes.

10 Q And then it goes on to say, "I need you to  
11 start working with Mark Monjot from Atofina and  
12 LaDonna Radig from Atofina on your requirements."

13 Explain the reference to "on your  
14 requirements."

15 A That never happened, is what was in there.

16 We would not contact Mark or LaDonna. We,  
17 again, would deal with Nexpak as far as that,  
18 scheduling the material.

19 Q And then, of course, it goes on to say,  
20 "Just like you work with Jamie and Tracy from BP."

21 A Right. Those were the sales rep I had  
22 talked to you about and the customer service.

23 Q What was Port Erie's requirements that were  
24 communicated to Jamie and Tracy from BP?

25 A We did not give BP requirements.

PAGE 42

42

1 Q Do you have any understanding of why  
2 Mr. Schaetzle would think that Port Erie was  
3 communicating requirements to BP?

4 A No.

5 Q Did you ever ask Jim about this particular  
6 sentence?

7 A I assumed that it would work the same way  
8 with BP, as far as they would order the material, it  
9 would come in, and then as we would need it, it would  
10 be taken from the railcar.

11 Yeah, Debbie would be the one that would  
12 have done that, Debbie Beiter, who is Nexpak's, I  
13 believe, purchasing person. She would schedule the  
14 materials.

15 Q The next paragraph goes on to say, "The  
16 process with Atofina will be the same. Nexpak will  
17 give Atofina a blanket order, and they will ship  
18 railcars to your terminal based on the requirements  
19 you give them, but bill Nexpak for the railcars."

20 What is your understanding of the phrase  
21 "but bill Nexpak for the railcars"?

22 A They owned the material, Nexpak.

23 We never received or owned the material, so  
24 we were never billed for it.

25 Q Is this a reference to Atofina billing

PAGE 44

44

1 BY MR. HOWARD:

2 Q The court reporter has handed you what we  
3 marked as Witkowski 5. It appears to be a straight  
4 bill of lading short form, it has a date of June 4th,  
5 2004, and this was a document that was produced to us  
6 by your counsel.

7 Do you recognize this document?

8 A I know what it is.

9 Q What is it?

10 A It's saying it's a bill of lading for  
11 something that was shipped.

12 Q Did Port Erie receive bills of lading like  
13 this for the shipments of the resin?

14 A No.

15 Q Do you know how this came to be in  
16 Port Erie's files?

17 A No.

18 Q Do you know who would know?

19 A No.

20 Q This identifies Port Erie Plastics as the  
21 "Ship to" or the "Consignee" party.

22 Do you see that?

23 A Yes.

24 Q Do you have an understanding of why  
25 Port Erie Plastics would have been identified as the

PAGE 43

43

1 Nexpak for the material or for railcars?

2 A The material. The material came in  
3 railcars.

4 Q Right.

5 A So railcars would have been material, in my  
6 mind.

7 Q And the next sentence goes on, "Nexpak will  
8 debit PEP for the railcar."

9 What is that a reference to?

10 A That's the relationship where I said after  
11 we mold the product, there was a fixed price.

12 And, again, I do not know how that worked.

13 Q So the debit -- it's your understanding  
14 that the debit that's referenced in that sentence had  
15 to do with the debit that we spoke about earlier for  
16 the material cost that would be applied to the  
17 Port Erie invoice to Nexpak?

18 A Correct.

19 Q I think you just mentioned a Debbie Belter.  
20 Is that her name?

21 A Debbie Beiter.

22 Q Debbie Beiter?

23 MR. HOWARD: Mark this as No. 5.

24 (Thereupon, Witkowski Deposition Exhibit  
25 No. 5 was marked for identification.)

PAGE 45

45

1 consignee on the bill of lading?

2 A No.

3 Q And it gives the destination as Mount Fort  
4 Terminal.

5 Do you know who would have decided that  
6 Port Erie would be identified as the consignee with an  
7 address of --

8 A I'm not sure what "consignee" really means  
9 as far as this relationship, other than that Mount  
10 Fort Terminal is where the material ended up at.

11 Q Do you know how it got to the Mount Fort  
12 Terminal?

13 A However Nexpak and BP scheduled it.

14 Q Do you know whether Port Erie Plastics  
15 would have a bill of lading like this for every car  
16 that's at issue?

17 A No, we would not.

18 I -- we received notice of the railcar that  
19 was in the Mount Fort Terminal based on the weekly  
20 inventory that we received from Presque Isle Trucking.

21 Never saw any bills of lading.

22 Q Now, the materials that are being shipped  
23 here, this is a bill of lading for the type of resin  
24 you were receiving from BP, correct, the 8941?

25 A Yes.



SHEET 7 PAGE 46

46

1 MR. HOWARD: Mark this as 6.  
 2 (Thereupon, Witkowski Deposition Exhibit  
 3 No. 6 was marked for identification.)  
 4 BY MR. HOWARD:  
 5 Q The court reporter handed you what she has  
 6 marked as Exhibit 6, and this is a collection of what  
 7 appears to be freight bills.  
 8 Your counsel produced a substantial number  
 9 of similar documents. I'm just going to get this  
 10 small sampling marked.  
 11 Could you identify this document?  
 12 A This is a ticket that we would receive when  
 13 Presque Isle Trucking would deliver the resin to  
 14 Port Erie.  
 15 Q And there are about seven or eight or  
 16 nine pages attached as part of this exhibit.  
 17 Are these all essentially the same thing as  
 18 you just described them?  
 19 A Yes.  
 20 Q These are freight bills that Presque Isle  
 21 sent to Port Erie for the transport of the resin from  
 22 Mount Fort to Port Erie; would that be an accurate  
 23 characterization of these documents?  
 24 A Yes.  
 25 MR. HOWARD: Can we take about a

PAGE 48

48

1 A We would receive them by email.  
 2 I'm not sure if we still have copies of  
 3 them.  
 4 Q Do you know if anyone looked on your  
 5 servers or computers to see whether these emails --  
 6 A I do not know.  
 7 Q Do you know if Mr. Johnson would know?  
 8 A I do not know that.  
 9 Q And is it your testimony that a document of  
 10 this type, similar to this type, would arrive from  
 11 Presque Isle Trucking on a weekly basis to Port Erie?  
 12 A Correct.  
 13 Q What is your understanding of the column  
 14 that says "Date Placed," or do you have an  
 15 understanding of what that means?  
 16 A My understanding of this is the cars that  
 17 Mr. Bartosik had in his possession at the Mount Fort  
 18 Terminal.  
 19 Q The second car on this inventory is  
 20 identified as being full.  
 21 What is your understanding of what that  
 22 means?  
 23 A It is a full railcar of resin.  
 24 Q So at the time you received this, that  
 25 second car, it would have been your understanding that

PAGE 47

47

1 five-minute break, Rich?  
 2 MR. PARKS: Sure.  
 3 MR. HOWARD: I want to look at my notes and  
 4 see if there's anything else I want to ask.  
 5 (Recess taken.)  
 6 MR. HOWARD: Mark that as 7.  
 7 (Thereupon, Witkowski Deposition Exhibit  
 8 No. 7 was marked for identification.)  
 9 BY MR. HOWARD:  
 10 Q The court reporter has handed you what has  
 11 been marked as Exhibit 7.  
 12 Are you familiar with this type of  
 13 document?  
 14 A Yes.  
 15 Q And what is this document?  
 16 A This is the inventory that we receive  
 17 weekly from Presque Isle Trucking.  
 18 Q This particular inventory sheet is dated  
 19 November 19th, 2004 which, of course, is well after  
 20 the relevant time period in this case.  
 21 Do you know if -- and this document was  
 22 provided to me by a gentleman named Steve Bartosik.  
 23 Do you know if Port Erie has copies of  
 24 inventory sheets such as this during the relevant time  
 25 period?

PAGE 49

49

1 that car was still full of resin that hadn't been  
 2 brought over to your facility?  
 3 A Correct.  
 4 Q It also would be your understanding that  
 5 that car had arrived or had been placed at the  
 6 Mount Fort facility on July 26th?  
 7 A Correct.  
 8 Q This particular inventory sheet was  
 9 prepared almost four months later, November 19th,  
 10 2004.  
 11 Would that car have begun to appear on  
 12 the inventory sheets back when it was originally  
 13 placed?  
 14 A If it was in the Mount Fort Terminal and  
 15 Steve had control of it, yes.  
 16 Q So assuming that the information on this  
 17 sheet is correct, that every weekly inventory sheet  
 18 that you had received since the placement of that car  
 19 would have reflected the fact that that car was at the  
 20 Mount Fort facility?  
 21 A Yes.  
 22 Q Now, the first car there indicates that  
 23 it's only quarter full, and there's an entry in the  
 24 column headed or identified as "Date Tapped."  
 25 Could you explain what's being reported

PAGE 50

50

1 there?

2 A "Date Tapped" means that would be the first  
3 day that Presque Isle Trucking would pull material  
4 from the railcar.

5 Q So we could assume or we could believe that  
6 on October 25th, Presque Isle took three quarters of  
7 that car --

8 A No.

9 Q -- put it in one of its trucks and brought  
10 it over to --

11 A No, one quarter of that car.

12 When a -- he would take one compartment of  
13 the four on 10-25, and when he would take the second  
14 compartment, he would change that to be two of four,  
15 but he would not change the "Date Tapped."

16 Q So that particular car, where it says  
17 "1/4," only one compartment has been emptied?

18 A Correct.

19 Q And three still have material in them?

20 A Correct.

21 Q And it would be this inventory sheet that  
22 Port Erie would use to determine what resin was  
23 available for production?

24 A This inventory sheet would do us and  
25 Nexpak, and they would determine what we needed to

PAGE 51

51

1 have for production.

2 Q How do you know that this was also sent to  
3 Nexpak?

4 A Because they used to get it as well.  
5 I'm not sure whether it was faxed or  
6 emailed.

7 Q And what is the basis for your  
8 understanding that they used to get it?

9 A They told us they used to get it.

10 Q By whom were you told?

11 A Either Steve Schaetzle or Kevin Kirtz,  
12 whoever was responsible at that time.

13 In this case, it would have been  
14 Kevin Kirtz.

15 Q Why are you saying in this case it would be  
16 Kirtz; because of the date?

17 A Because of transition from Steve to Kevin.

18 But for that date, that sheet here would  
19 have gone to Kevin.

20 Q What about the relevant time period,  
21 2002-2003, would that have been Schaetzle?

22 A Correct.

23 Q Do you know where Mr. Schaetzle works now?

24 A No, no, I don't.

25 Q But Mr. Johnson does.

PAGE 52

52

1 Well, then, I'll ask him that later.

2 A Okay.

3 MR. HOWARD: Mark this as 8.

4 (Thereupon, Witkowski Deposition Exhibit  
5 No. 8 was marked for identification.)

6 BY MR. HOWARD:

7 Q The court reporter has handed you what has  
8 been marked as Witkowski 8.

9 Is this a document that you're familiar  
10 with?

11 A No.

12 Q Have you ever seen a document of this type  
13 before? Do you know what a constructive placement  
14 notice is?

15 A I believe it's when it's actually  
16 transferred into the Mount Fort Terminal.

17 Q And what is the basis of that belief?

18 A Just what I believe.

19 Q Did Port Erie Plastics receive constructive  
20 placement notices for cars arriving at Mount Fort?

21 A No.

22 Q Did they receive constructive placement  
23 notices for cars arriving anywhere in Erie?

24 A No.

25 Q Do you know why, at the bottom of this

PAGE 53

53

1 page, Port Erie Plastics would be identified on this  
2 particular notice?

3 A No.

4 Q Up at the top, there's a car identified.

5 Can you tell from that description whether  
6 this would have been material sent from Amoco for use  
7 in creating the Nexpak DVD cases?

8 A I can tell you it came from Amoco, but I  
9 cannot tell you what the grade of material is, so I do  
10 not know if it is used for Nexpak.

11 Q Okay. The exhibit you're looking at,  
12 Exhibit 8, was provided to me by Mr. Bartosik, who  
13 I mentioned before.

14 Who is Steve Bartosik?

15 A He was an employee of Presque Isle  
16 Trucking.

17 Q And did you have a business relationship  
18 with him?

19 A I knew who he was. He would send me the  
20 inventories, but other than that, no.

21 Q And was that the extent of your  
22 communications with Mr. Bartosik, was the receipt of  
23 the inventories?

24 A Yeah, because the invoicing that we had  
25 mentioned here earlier did not come to me.



SHEET 8 PAGE 54

54

1 Q The invoicing?  
 2 A This (indicating).  
 3 Q Oh, okay.  
 4 A Document 6, or whatever, you're talking  
 5 about.  
 6 Q Who would get that?  
 7 A Would have been someone else in the  
 8 purchasing department that would have verified that  
 9 against the receipts.  
 10 Q The two people you identified in your  
 11 inventory department, Mr. Nickle and Mr. Field --  
 12 A Uh-huh.  
 13 Q -- do you know if they had contact with  
 14 Mr. Bartosik?  
 15 A No, I do not know.  
 16 Q And I may have asked you this before: Are  
 17 they still with Port Erie?  
 18 A Yes.  
 19 Q Do you recall when Port Erie received its  
 20 first demurrage bill from CSX?  
 21 A No, I don't remember the date.  
 22 Q Let me represent to you that the first bill  
 23 at issue in this case is sometime early 2002. I  
 24 believe it was April of 2002.  
 25 Is it your recollection that you received

PAGE 56

56

1 A No, I do not.  
 2 Q When you received a second demurrage bill,  
 3 what was your response to that?  
 4 A At that point in time, I again went and saw  
 5 Mr. Johnson.  
 6 I don't remember the time frame between the  
 7 bills. They were not monthly.  
 8 I believe I then tried contacting someone  
 9 else at CSX.  
 10 Q And do you recall whether you were able to  
 11 make contact with someone at CSX?  
 12 A Eventually I did make contact with a sales  
 13 lady at that time named Barbara Jenkins.  
 14 I don't remember the timing of that  
 15 whole --  
 16 Q Would you have a recollection of how many  
 17 demurrage bills you had received by the time you made  
 18 contact with Ms. Jenkins?  
 19 A Two, maybe three, but at that point in  
 20 time, they were a large number.  
 21 Q Do you recall the specifics and the  
 22 substance of the conversation you had with  
 23 Ms. Jenkins?  
 24 A That I was not responsible for this because  
 25 I did not order the material or schedule the material,

PAGE 55

55

1 bills -- from the time you got the first one, you  
 2 received bills on a monthly basis from --  
 3 A No.  
 4 Q -- CSX?  
 5 A And I --  
 6 Q Did the bills come to you?  
 7 A They would go to the purchasing department  
 8 if they came in.  
 9 Q And what was your response to receiving  
 10 those bills?  
 11 A Well, the first bill I saw was for an  
 12 exorbitant amount of money, and I did not know what it  
 13 was for.  
 14 Q What efforts did you make to find out what  
 15 it was for?  
 16 A I had contacted, I believe, a number on the  
 17 invoice to find out what this was for, left a message,  
 18 and tried to find out.  
 19 At that point in time, I also had let  
 20 Mr. Johnson know that there was an issue here and I  
 21 did not know what it was regarding.  
 22 Q Was that message ever returned?  
 23 A I believe it was, but I don't remember what  
 24 the response was.  
 25 Q Do you recall who you spoke with?

PAGE 57

57

1 and she needed to find out why were we getting these  
 2 bills.  
 3 Q That was her response, that she was --  
 4 A That was what I told her.  
 5 Q What was her response to that?  
 6 A She was going to look into it, and nothing  
 7 never really happened with it.  
 8 Q Did you make contact or attempt to make  
 9 contact with CSX when you received subsequent bills?  
 10 A The bills stopped.  
 11 Q So is it your testimony that you've only  
 12 received two or three demurrage bills?  
 13 A Yeah. That's all I can remember seeing,  
 14 yes.  
 15 Q And if a demurrage bill would have come in,  
 16 it would have come to the purchasing department?  
 17 A Correct.  
 18 Q Which was you at that time?  
 19 A Well, me and another gentleman, and  
 20 possibly a third person.  
 21 MR. HOWARD: Could you read back the last  
 22 answer?  
 23 (Record read.)  
 24 BY MR. HOWARD:  
 25 Q Who would the other gentleman have been?

PAGE 58

58

1 A Rich Wilson at that time, I believe.  
 2 Q And what was Rich Wilson's job at the time?  
 3 A Buyer.  
 4 Q And who was the possible other third  
 5 person?  
 6 A There was a lady we had at one time named  
 7 Lucia.  
 8 Q Lucia?  
 9 A Lucia.  
 10 MR. HOWARD: I didn't make multiple copies  
 11 of this (indicating). This is a document Bates  
 12 stamped CSX18A. It's the spreadsheet of the  
 13 bills.  
 14 MR. PARKS: The CSX spreadsheet?  
 15 MR. HOWARD: The CSX spreadsheet.  
 16 MR. PARKS: Other than showing they were  
 17 sent?  
 18 That is what's attached to, what, your  
 19 complaint or --  
 20 MR. HOWARD: Yes, this is attached to the  
 21 complaint, and it was also part of the  
 22 production.  
 23 MR. PARKS: Okay. It's their internal  
 24 document.  
 25 MR. HOWARD: Let's mark this as whatever

PAGE 59

59

1 we're up to now.  
 2 MR. PARKS: 9.  
 3 MR. HOWARD: 9.  
 4 (Thereupon, Witkowski Deposition Exhibit  
 5 No. 9 was marked for identification.)  
 6 BY MR. HOWARD:  
 7 Q I've handed you what we've marked as  
 8 Exhibit 9. I represent to you that it's a  
 9 spreadsheet.  
 10 CSX created the document that shows all of  
 11 the bills, the demurrage bills, that have been sent by  
 12 CSX to Port Erie.  
 13 It looks like --  
 14 MR. HOWARD: Pardon me?  
 15 MR. PARKS: I just made a comment.  
 16 The dates are all scrambled, and I said I  
 17 didn't mix them on the spreadsheet.  
 18 MR. HOWARD: I haven't even asked that yet.  
 19 MR. PARKS: I thought the sort was by date.  
 20 BY MR. HOWARD:  
 21 Q I believe the earliest one of the bills  
 22 there is identified as May 2nd, and the latest one is,  
 23 I think, May '02, 2002, and the last one is in October  
 24 of 2003, and I think there are 15 or 16 bills on  
 25 there.

PAGE 60

60

1 Do you recall seeing that many demurrage  
 2 bills from CSX?  
 3 A No, no.  
 4 MR. PARKS: Keep your voice up, please.  
 5 A No.  
 6 It's to somebody, but I've never seen  
 7 bills.  
 8 Q You've never seen --  
 9 A I've never seen --  
 10 Q -- all those bills?  
 11 A -- the demurrage bills or this piece of  
 12 paper (indicating).  
 13 Q I understand you haven't seen the paper. I  
 14 just handed that to you rather than giving you a stack  
 15 of 15 bills and ask you whether you've seen them or  
 16 not.  
 17 A Right.  
 18 Q So it's your testimony that as far as you  
 19 know, you've only received two or three demurrage  
 20 bills from CSX?  
 21 A Correct.  
 22 Q Just leave that there. The documents have  
 23 to stay together.  
 24 A Okay.  
 25 MR. HOWARD: I think that's all I have for

PAGE 61

61

1 Mr. Witkowski.  
 2 MR. PARKS: We waive signature.  
 3 -- --  
 4 (Thereupon, at 10:26 a.m., the deposition  
 5 was concluded and signature was waived.)  
 6 -- --  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

SHEET 9 PAGE 62

62

## CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA, )  
 ) SS:  
COUNTY OF ALLEGHENY. )

I, Teresa Constantini Berardi, do hereby certify that before me, a Notary Public in and for the Commonwealth aforesaid, personally appeared JAMES WITKOWSKI, who then was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the taking of his oral deposition in the cause aforesaid; that the testimony then given by him as above set forth was by me reduced to stenotypy in the presence of said witness, and afterwards transcribed by means of computer-aided transcription.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Pittsburgh, Pennsylvania, on this \_\_\_\_ day of \_\_\_\_\_, 2006.

Teresa Constantini Berardi, Notary Public  
In and for the Commonwealth of Pennsylvania  
My commission expires October 9, 2008.

- - -



<b>0</b>	<b>7</b>	atofina [9] 39:12,14 40:8 41:4,11, 12 42:16,17,25	buyer [1] 58:3
02 [1] 59:23 0304 [1] 32:5 04-15-05.xls [1] 3:15 0404 [1] 32:7	7 [5] 3:5,12 47:6,8,11 7-13-00 [1] 3:3 7048 [1] 4:17	attached [4] 15:17 46:16 58:18, 20 attempt [1] 57:8 authorizing [1] 10:11 available [2] 23:18 50:23 aware [1] 21:7	<b>C</b>
<b>1</b>	<b>8</b>	<b>B</b>	call [1] 24:22
1 [8] 3:5 7:23,25 8:3 10:4,6,19,23 1/4 [1] 50:17 10 [1] 12:22 10-25 [1] 50:13 10:26 [1] 61:4 11-19-04 [1] 3:12 124277 [1] 3:15 15 [2] 59:24 60:15 16 [1] 59:24 16507-1498 [2] 1:18 2:10 19th [2] 47:19 49:9	8 [4] 52:3,5,8 53:12 8:57 [1] 1:18 8931 [1] 26:20 8941 [2] 26:19 45:24	back [9] 12:15 17:17 25:7 31:17 33:6 34:9,14 49:12 57:21 backtrack [1] 12:8 bankruptcy [1] 16:11 barbara [1] 56:13 bartosik [6] 47:22 48:17 53:12, 14,22 54:14 based [9] 9:16 17:15 19:9 28:14 30:12,16 34:15 42:18 45:19 basically [2] 14:21 32:15 basis [6] 32:4 33:10 48:11 51:7 52:17 55:2 bates [1] 58:11 begun [1] 49:11 behalf [2] 2:2,7 behind [1] 9:15 beiter [3] 42:12 43:21,22 belief [1] 52:17 believe [18] 8:7 9:6 13:9 16:12, 22 38:8,20 39:11 42:13 50:5 52: 15,18 54:24 55:16,23 56:8 58:1 59:21 bell [1] 38:23 belter [1] 43:19 berardi [3] 1:16 62:4,19 best [1] 5:14 beth [1] 38:23 between [10] 9:11,23 10:14,20, 21 15:25 16:8 19:8 24:20 56:6 beyond [1] 40:15 bill [15] 3:10 21:11 22:1 42:19,21 44:4,10 45:1,15,23 54:20,22 55: 11 56:2 57:15 billed [1] 42:24 billion [1] 42:25 bills [26] 3:11 44:12 45:21 46:7, 20 55:1,2,6,10 56:7,17 57:2,9,10, 12 58:13 59:11,11,21,24 60:2,7, 10,11,15,20 bit [2] 25:7 33:6 blanket [1] 42:17 both [1] 19:18 bottom [3] 28:21 39:21 52:25 bp [30] 9:21 10:16 11:4 18:3,7,8, 15,20,25 19:7,8,10,18 20:24 21: 5 23:2,5 35:25 40:17,21,24,25 41:5,20,24,25 42:3,8 45:13,24 break [1] 47:1 brian [1] 12:4 bring [2] 22:8 35:17 bringing [1] 22:10 britton [2] 1:17 2:8 brought [5] 22:4 24:3 25:10 49:2 50:9 bulk [2] 27:6 40:8 business [10] 14:2,4,24 15:25 16:5,8,18,21 20:17 53:17	called [3] 1:14 4:2 13:3 calling [1] 13:1 came [5] 22:21 43:2 44:15 53:8 55:8 cannot [1] 53:9 canton [2] 16:16 40:9 capabilities [1] 14:14 capacity [3] 6:8 19:22 24:18 car [13] 45:15 48:19,25 49:1,5,11, 18,19,22 50:7,11,16 53:4 carried [1] 21:4 carrier [1] 21:7 carriers [4] 20:23,23,25 38:4 cars [4] 23:11 48:16 52:20,23 case [11] 4:22,23 12:24 13:4 17: 20 29:21 35:16 47:20 51:13,15 54:23 case's [1] 40:7 cases [9] 16:2 17:7,9 33:14 34:2 37:8 39:18 53:7 cause [1] 62:7 cautioned [1] 62:6 cc's [1] 38:22 cents [2] 29:22 30:23 certificate [1] 62:1 certified [1] 4:3 certify [3] 62:4,10,12 change [3] 37:7 50:14,15 characterization [2] 27:4 46:23 charge [3] 11:24 17:12,17 charged [2] 17:14 31:20 charges [5] 6:18,24 7:8,10 9:13 check [2] 18:18 30:1 checking [1] 18:22 chuck [1] 4:9 civil [1] 1:15 claim [1] 5:7 clapper [1] 38:23 collection [1] 46:6 column [2] 48:13 49:24 come [6] 16:12 42:9 53:25 55:6 57:15,16 commencing [1] 1:18 comment [1] 59:15 commerce [1] 2:4 commission [1] 62:20 common [1] 14:15 commonwealth [2] 62:2,5 communicated [3] 19:16,17 41: 24 communicating [1] 42:3 communication [2] 24:20 25:13 communications [2] 25:19 53: 22 companies [3] 37:13,24 38:1 company [4] 5:4 25:15 38:21 39: 13 compartment [3] 50:12,14,17 compiled [1] 13:13 complaint [2] 58:19,21 completed [1] 62:11 computer-aided [2] 1:21 62:9 computers [1] 48:5
<b>2</b>	<b>9</b>		
2 [7] 1:12 8:11,18 25:23,25 26:3 29:17 20 [1] 19:24 2000 [1] 35:5 2000-2001 [1] 16:6 2002 [4] 39:25 54:23,24 59:23 2002-2003 [7] 7:9 22:24 24:11 27:5,15 28:3 51:21 2003 [1] 59:24 2003-2004 [1] 12:15 2004 [7] 16:22,22 26:23 27:12 44: 5 47:19 49:10 2005 [1] 2:5 2006 [1] 1:12 2008 [1] 62:20 25 [1] 3:2 25th [1] 50:6 26th [1] 49:6 27 [1] 6:15 28 [1] 6:15 2nd [1] 59:22	<b>A</b> a.m. [2] 1:18 61:4 able [2] 29:4 56:10 accompanied [2] 21:11 22:1 account [1] 28:14 accounting [2] 34:12,21 accrued [1] 9:12 accurate [1] 46:22 acquire [1] 16:3 action [1] 62:13 actual [1] 13:24 actually [2] 30:7 52:15 address [1] 45:7 adjournment [1] 62:11 affidavit [3] 15:1,8,13 aforesaid [2] 62:5,7 ago [3] 4:25 5:1 12:5 agree [1] 27:4 agreement [1] 36:4 agreements [6] 9:10,11 10:14, 19,25 11:3 allegheeny [1] 62:3 allow [3] 15:11 28:19 41:3 almost [1] 49:9 already [3] 16:13 29:15 31:17 amended [2] 3:5 8:4 amoco [4] 26:19,20 53:6,8 amount [4] 29:9 30:1,2 55:12 another [5] 5:2 30:25 38:20 40: 13 57:19 answer [7] 5:13,20,25 9:16 10:24 17:19 57:22 answered [1] 29:15 answers [2] 5:16 13:20 apologize [1] 31:6 appear [2] 8:10 49:11 appearances [1] 2:1 appeared [1] 62:5 appears [3] 29:17 44:3 46:7 applied [1] 43:16 april [2] 39:25 54:24 arose [1] 6:18 arranged [1] 18:6 arrangement [2] 35:9 40:23 arrival [1] 39:7 arrive [1] 48:10 arrived [7] 21:10,25 22:3,17 23:8 27:5 49:5 arriving [2] 52:20,23 assume [3] 5:21 18:11 50:5 assumed [1] 42:7 assuming [5] 10:10,16 18:4,8 49: 16		
<b>3</b>			
3 [6] 33:2,4 34:24,25 36:5 40:8 30(b)(6) [2] 4:12 8:14 33 [1] 3:3 38 [1] 3:9			
<b>4</b>			
4 [9] 3:9 9:10,22 10:4,7,8,23 38: 11,14 4-5-02 [1] 3:9 43 [1] 3:10 46 [1] 3:11 47 [1] 3:12 4th [1] 44:4			
<b>5</b>			
5 [4] 3:10 43:23,25 44:3 52 [1] 3:8 53 [1] 14:3 57 [2] 29:22 30:23 59 [1] 3:9 5th [1] 39:25			
<b>6</b>			
6 [5] 3:11 46:1,3,6 54:4 6-4-04 [1] 3:10			

concerning [6] 11:2 18:16 19:1, 4 20:3 25:19  
 concerns [1] 18:24  
 concluded [1] 61:5  
 confirm [2] 14:1 35:9  
 confirmed [1] 16:15  
 connect [1] 30:8  
 consignee [4] 44:21 45:1,6,8  
 constant [1] 19:25  
 constantini [3] 1:16 62:4,19  
 constructive [4] 3:8 52:13,19,22  
 contact [16] 18:15,17,25 19:3 23:24 24:1,4,5,6 41:16 54:13 56:11,12,18 57:8,9  
 contacted [1] 55:16  
 contacting [2] 25:9 56:8  
 contacts [1] 18:20  
 contained [1] 13:14  
 contract [2] 10:22 16:4  
 contracts [4] 9:11,23 10:14,20  
 control [2] 36:3 49:15  
 conversation [1] 56:22  
 coordinated [1] 11:24  
 coordinating [1] 12:17  
 copies [4] 7:20 47:23 48:2 58:10  
 corner [2] 26:25 28:22  
 corporate [2] 1:11 8:4  
 correct [39] 8:12 9:1,4 12:19,21 14:18 18:1 22:15,16 25:11 26:17,21 27:1,9,11,13,17 28:18 31:1,23,25 32:10 33:23 36:19 37:4,5,5 41:7 43:18 45:24 48:12 49:3,7,17 50:18,20 51:22 57:17 60:21  
 correspondence [1] 3:9  
 cost [18] 17:22 29:8,21,23,24 30:11,19 31:5,7,10,11,17 34:3,5,5,14,19 43:16  
 costing [1] 29:20  
 costs [5] 17:15,16,20 30:2 34:1  
 couldn't [2] 15:16 21:21  
 counsel [7] 8:15 10:6 11:10 13:3 15:6 44:6 46:8  
 county [1] 62:3  
 couple [1] 15:2  
 course [2] 41:19 47:19  
 court [9] 1:1 4:14 8:2 16:15 26:2 44:2 46:5 47:10 52:7  
 created [2] 32:1 59:10  
 creating [1] 53:7  
 csx [21] 1:4 4:9 9:3,4 10:21 11:4,10 13:2 21:2,4 54:20 55:4 56:9,11 57:9 58:14,15 59:10,12 60:2,20  
 csx's [1] 8:4  
 csx18a [1] 58:12  
 currently [2] 4:16 6:5  
 custom [1] 14:6  
 customer [5] 5:2 14:14 16:4 36:2 41:22  
 customers [4] 14:9 17:7 20:6 33:22

## D

daily [3] 19:12,15,17  
 date [10] 1:18 44:4 48:14 49:24 50:2,15 51:16,18 54:21 59:19  
 dated [7] 3:3,9,10,12 26:23 39:25

concerning - handled

47:18  
 dates [2] 32:12 59:16  
 dave [1] 25:2  
 david [1] 24:14  
 day [3] 1:18 50:3 62:15  
 deal [2] 14:23 41:17  
 debbie [5] 42:11,12 43:19,21,22  
 debit [9] 28:12,13 29:9 34:8,14 43:8,13,14,15  
 decided [3] 10:17 19:6 45:5  
 decrease [1] 20:5  
 deduct [2] 30:2 31:16  
 defendant [6] 1:8 2:7 8:24 9:11 10:15 12:23  
 deliver [1] 46:13  
 delivered [2] 36:15,22  
 deliveries [1] 39:24  
 demurrage [13] 5:7 6:18 7:8 9:12 54:20 56:2,17 57:12,15 59:11 60:1,11,19  
 dennis [1] 39:10  
 department [12] 6:25 23:25 24:7,9,12,22 25:9 32:21 54:8,11 55:7 57:16  
 deposited [3] 4:4,18 5:11  
 deposition [20] 1:10,14 3:5 4:11 7:22,24 8:4 14:20 15:6 25:24 33:3 38:10 43:24 46:2 47:7 52:4 59:4 61:4 62:7,10  
 described [1] 46:18  
 description [1] 53:5  
 designed [1] 28:16  
 designee [3] 1:11 4:12 8:5  
 destination [1] 45:3  
 detail [1] 16:24  
 determine [4] 20:8,10 50:22,25  
 determined [1] 38:2  
 different [2] 20:23 39:20  
 direct [1] 25:18  
 directed [1] 12:23  
 district [3] 1:1,2 16:15  
 document [26] 3:9 8:3,6,11 12:10,16 26:3,4 28:22 30:9 32:1 35:1 38:15 44:5,7 46:11 47:13,15,21 48:9 52:9,12 54:4 58:11,24 59:10  
 documents [9] 11:10,13,14,17 12:12 14:25 46:9,23 60:22  
 doing [5] 5:19 12:1 16:18 27:23 32:23  
 dollar [1] 29:6  
 dollars [4] 28:23,25 30:20 37:2  
 done [1] 42:12  
 double [1] 30:6  
 doubt [1] 40:3  
 down [1] 18:4  
 drops [1] 6:3  
 duly [1] 4:3  
 duplicates [2] 10:4,7  
 during [9] 6:17 7:7,13 22:24 24:11 27:19 28:2 37:19 47:24  
 dust [1] 34:1  
 dvd [7] 16:2 17:20 33:14 34:1 37:8 39:18 53:7

## E

each [1] 19:13

earlier [2] 43:15 53:25  
 earliest [1] 59:21  
 early [1] 54:23  
 east [1] 40:8  
 effort [2] 11:24 12:18  
 efforts [1] 55:14  
 eight [2] 12:11 46:15  
 either [5] 11:2,3 18:8 25:2 51:11  
 email [6] 3:9 19:20 39:21 40:1,6 48:1  
 emailed [1] 51:6  
 emails [2] 38:17 48:5  
 employed [4] 6:5,13,16 24:16  
 employee [1] 53:15  
 employees [2] 7:1 24:12  
 emptied [1] 50:17  
 end [1] 16:21  
 ended [1] 45:10  
 enough [1] 20:8  
 entire [2] 14:23 15:3  
 entitled [1] 3:9  
 entity [1] 20:13  
 entry [1] 49:23  
 erie [102] 1:7,11,22 2:10 3:9 4:12,17 5:5 6:5,11,14,21 7:13 8:25 9:7,16,19,23 11:6,22,23 12:10 14:2,4,7 16:1,3,8,18 17:4,25 18:7,13,15,25 19:3 20:11,24 21:5,10,12,25 22:3,4,6 23:1,4,7,8,13,15,17,22 24:12,16,21 25:9,10,16 27:5,9,19 28:1,6,25 29:12 33:8,20,24 34:11,18,18 35:11,14,18,23 36:6,18,20,25 37:7,20 39:14 42:2 43:17 44:12,20,25 45:6,14 46:14,21,22 47:23 48:11 50:22 52:19,23 53:1 54:17,19 59:12  
 erie's [4] 24:6 34:1 41:23 44:16  
 esquire [1] 2:9  
 essentially [6] 5:13 10:23 31:19 33:25 40:22 46:17  
 estimate [1] 5:18  
 even [2] 17:22 59:18  
 event [1] 62:13  
 eventually [1] 56:12  
 everything [3] 7:21 11:15 34:6  
 exactly [3] 5:3 12:9 21:21  
 examination [2] 3:2 4:5  
 excessive [1] 6:23  
 exchange [1] 37:2  
 exhibit [22] 7:23,24 8:3 25:24 26:3 29:17 32:8 33:3 34:24 36:5 38:10 43:24 46:2,6,16 47:7,11 52:4 53:11,12 59:4,8  
 exorbitant [1] 55:12  
 expires [1] 62:20  
 explain [3] 16:23 41:13 49:25  
 extent [1] 53:21

## F

facility [19] 19:7 20:24 21:11,13 22:1,4,4,9,17 23:5 25:16 32:15 36:15 37:14 38:6,7 49:2,6,20  
 fact [2] 16:10 49:19  
 fahey [3] 11:25 12:4,11  
 fair [3] 5:22 8:9 9:18  
 familiar [3] 20:13 47:12 52:9  
 far [6] 19:12 34:12 41:17 42:8 45:

9 60:18  
 fax [1] 19:20  
 faxed [1] 51:5  
 february [1] 1:12  
 federal [1] 1:15  
 felt [1] 23:25  
 few [2] 5:10 8:19  
 field [1] 54:11  
 fields [1] 24:14  
 filed [2] 15:10,14  
 files [1] 44:16  
 film [1] 26:13  
 final [7] 29:18,20,23 31:9,13,16 33:7  
 finally [1] 31:3  
 find [4] 55:14,17,18 57:1  
 finish [1] 27:23  
 finished [2] 8:21 28:12  
 first [14] 3:5 4:3 8:4 26:18 32:8 35:8 37:10 38:18 49:22 50:2 54:20,22 55:1,11  
 fit [1] 29:17  
 five [1] 5:1  
 five-minute [1] 47:1  
 fixed [1] 43:11  
 follows [1] 4:4  
 form [1] 44:4  
 formal [1] 13:19  
 fort [15] 22:20 38:8 40:20 41:6 45:3,10,11,19 46:22 48:17 49:6,14,20 52:16,20  
 four [4] 5:1 49:9 50:13,14  
 frame [4] 12:2,15 16:6 56:6  
 freight [4] 20:24 21:5 46:7,20  
 friday [1] 39:25  
 full [5] 19:22 48:20,23 49:1,23  
 further [2] 62:10,12

## G

g-r-a-s-s-i [1] 17:5  
 gathering [2] 11:16 12:12  
 gave [1] 11:18  
 generate [2] 28:17,19  
 generated [1] 33:11  
 gentleman [4] 7:15 47:22 57:19,25  
 getting [4] 15:6 16:25 40:23 57:1  
 give [7] 5:10 16:23 31:9,13 41:25 42:17,19  
 given [2] 19:10 20:11  
 gives [2] 28:22 45:3  
 giving [1] 60:14  
 got [3] 18:2 45:11 55:1  
 govern [1] 36:5  
 governed [1] 16:5  
 grade [1] 53:9  
 grand [1] 28:22  
 grass [1] 7:5  
 guess [2] 5:17 7:8  
 guy [1] 39:4

## H

half [1] 12:5  
 hand [1] 62:14  
 handed [9] 8:3 26:3 38:13 44:2 46:5 47:10 52:7 59:7 60:14  
 handled [1] 9:21



<p>hands [1] 37:7</p> <p>handwriting [1] 32:16</p> <p>handwritten [1] 32:9</p> <p>happen [1] 37:17</p> <p>happened [2] 41:15 57:7</p> <p>happening [1] 14:22</p> <p>harborcreek [1] 36:15</p> <p>headed [1] 49:24</p> <p>hear [1] 16:3</p> <p>heard [1] 5:11</p> <p>hereby [1] 62:4</p> <p>hereinafter [1] 4:3</p> <p>hereunto [1] 62:14</p> <p>history [1] 9:15</p> <p>hit [1] 37:18</p> <p>hold [2] 21:17 27:22</p> <p>home [1] 14:10</p> <p>homopolymer [1] 40:7</p> <p>horrible [1] 21:19</p> <p>howard [45] 4:6,9 7:20 8:1 13:7, 15,16 15:12,16,19,23 16:17 17:2, 3 21:14,17,21,24 25:23 26:1 33: 2,5 38:12 43:23 44:1 46:1,4,25 47:3,6,9 52:3,6 57:21,24 58:10, 15,20,25 59:3,6,14,18,20 60:25</p> <p>however [2] 10:17 45:13</p> <hr/> <p><b>I</b></p> <p>i-n-d-e-x [1] 3:1</p> <p>identification [9] 7:25 25:25 33: 4 38:11 43:25 46:3 47:8 52:5 59: 5</p> <p>identified [10] 33:13 39:23 44:25 45:6 48:20 49:24 53:1,4 54:10 59:22</p> <p>identifies [2] 28:7 44:20</p> <p>identify [3] 26:4 35:1 46:11</p> <p>illig [2] 1:17 2:8</p> <p>inc [4] 1:4,7,11 4:10</p> <p>incidentals [1] 3:15</p> <p>include [3] 17:16,22 29:23</p> <p>included [1] 17:20</p> <p>increase [1] 20:5</p> <p>indicates [1] 49:22</p> <p>indicating [4] 15:2 54:2 58:11 60:12</p> <p>information [5] 9:19 11:18 13: 13 20:2 49:16</p> <p>initially [1] 40:9</p> <p>initiated [2] 18:20 24:21</p> <p>injection [2] 14:6 35:24</p> <p>inquire [1] 8:16</p> <p>instructions [1] 5:10</p> <p>intended [1] 37:16</p> <p>interested [1] 62:13</p> <p>internal [4] 17:15 28:5 30:9 58: 23</p> <p>internally [1] 30:13</p> <p>interrogatories [4] 12:23 13:4,6, 25</p> <p>interrogatory [1] 13:1</p> <p>inventories [2] 53:20,23</p> <p>inventory [27] 23:9,13,16,18,19, 25 24:6,6,8,12,19,22 25:9 28:19 29:6 32:21 45:20 47:16,18,24 48: 19 49:8,12,17 50:21,24 54:11</p> <p>invoice [15] 28:11 29:7,12,18,25</p>	<p>30:7 31:4,14 33:8,13,24 34:13, 17 43:17 55:17</p> <p>invoices [3] 31:15 33:9,17</p> <p>invoicing [5] 30:10 33:12 34:20 53:24 54:1</p> <p>involve [2] 5:5,7</p> <p>involved [3] 11:16 12:6,12</p> <p>involvement [2] 21:8 25:12</p> <p>isle [26] 21:16 22:5,7,10 23:10,22, 24 24:5,8,20,21,22 25:4,6,8 27:7 29:5 36:22 45:20 46:13,20 47:17 48:11 50:3,6 53:15</p> <p>issue [4] 27:3 45:16 54:23 55:20</p> <p>items [5] 8:10 9:5 10:1 26:18 29: 1</p> <hr/> <p><b>J</b></p> <p>james [4] 1:10,14 4:1,15</p> <p>jamie [2] 41:20,24</p> <p>janssen [1] 2:3</p> <p>jenkins [3] 56:13,18,23</p> <p>jim [2] 10:4 42:5</p> <p>job [2] 6:20 58:2</p> <p>john [1] 2:13</p> <p>johnson [8] 11:22,25 12:17 34: 22 48:7 51:25 55:20 56:5</p> <p>jones [2] 1:17 2:8</p> <p>july [2] 35:5 49:6</p> <p>jumped [1] 10:2</p> <p>june [1] 44:4</p> <hr/> <p><b>K</b></p> <p>keenan [1] 2:3</p> <p>keep [2] 25:15 60:4</p> <p>keeping [1] 21:19</p> <p>kevin [5] 25:21 51:11,14,17,19</p> <p>kirtz [4] 25:21 51:11,14,16</p> <p>knowledge [3] 5:15 9:7 11:7</p> <p>knowledgeable [2] 8:17 10:3</p> <p>known [2] 8:14 20:13</p> <hr/> <p><b>L</b></p> <p>labor [1] 31:9</p> <p>lading [1] 3:10,11 21:11 22:1 44: 4,10,12 45:1,15,21,23</p> <p>ladonna [4] 38:18,19 41:12,16</p> <p>lady [2] 56:13 58:6</p> <p>lane [1] 4:17</p> <p>large [1] 56:20</p> <p>last [7] 4:14 5:11 12:11 21:18 37: 10 57:21 59:23</p> <p>late [1] 16:22</p> <p>later [3] 13:24 49:9 52:1</p> <p>latest [1] 59:22</p> <p>law [1] 1:17</p> <p>lawsuit [2] 4:10 27:3</p> <p>leave [2] 19:7 60:22</p> <p>left [3] 12:4 23:5 55:17</p> <p>letter [2] 3:3 35:4</p> <p>lisa [1] 7:5</p> <p>list [4] 8:10,15 10:1 23:10</p> <p>listed [2] 8:18 26:19</p> <p>literally [1] 24:1</p> <p>little [5] 25:7 30:19 31:2 33:6 35: 11</p> <p>llp [1] 2:8</p> <p>local [2] 40:16,18</p>	<p>long [4] 4:25 6:10,13 14:2</p> <p>longer [1] 16:7</p> <p>look [5] 9:22 34:24 39:21 47:3 57: 6</p> <p>looked [2] 15:2 48:4</p> <p>looking [2] 13:8 53:11</p> <p>looks [3] 30:23 38:17 59:13</p> <p>loss [2] 37:12,15</p> <p>losses [1] 37:21</p> <p>lot [2] 9:15 32:9</p> <p>lower [1] 28:21</p> <p>lucia [4] 7:19 58:7,8,9</p> <hr/> <p><b>M</b></p> <p>m-a-i-l-l-e [1] 7:6</p> <p>macdonald [2] 1:17 2:8</p> <p>machine [3] 19:13 31:8,21</p> <p>machines [8] 19:9,11,13,22 20:3, 6,10 29:14</p> <p>made [8] 10:6 14:16 15:3,8,24 22: 24 56:17 59:15</p> <p>maile [1] 7:6</p> <p>manager [5] 6:9,11,17,21 39:11</p> <p>manufacture [1] 34:3</p> <p>manufacturing [2] 34:5,7</p> <p>many [8] 4:20 7:1 19:11,13,22 20: 10 56:16 60:1</p> <p>march [2] 26:23 27:12</p> <p>mark [10] 7:22 25:23 33:2 41:11, 16 43:23 46:1 47:6 52:3 58:25</p> <p>marked [18] 7:25 8:3 25:25 26:3 33:4 38:11,13 43:25 44:3 46:3,6, 10 47:8,11 52:5,8 59:5,7</p> <p>market [1] 2:5</p> <p>match [1] 29:8</p> <p>material [55] 17:8 18:23 20:8 22: 21 25:11 27:6 28:6,9,15,17 29:4, 8,21 30:2,11,14,19 31:11,16,18 32:3 34:5,7,14,15 36:14 38:21 39:5,6,13,14,16 40:14,24,25 41: 2,3,4,5,18 42:8,22,23 43:1,2,2,5, 16 45:10 50:3,19 53:6,9 56:25, 25</p> <p>materials [2] 42:14 45:22</p> <p>mean [5] 27:16 29:3 32:17 39:6 41:1</p> <p>means [4] 45:8 48:15,22 50:2</p> <p>meant [1] 10:10</p> <p>medical [1] 14:10</p> <p>meet [1] 20:6</p> <p>mel [2] 24:14 25:2</p> <p>memo [1] 3:12</p> <p>memorialized [1] 36:5</p> <p>mental [1] 14:21</p> <p>mentioned [3] 43:19 53:13,25</p> <p>message [2] 55:17,22</p> <p>met [1] 20:5</p> <p>might [1] 11:7</p> <p>mike [1] 7:6</p> <p>million [5] 28:23,25 30:20,23,24</p> <p>mind [1] 43:6</p> <p>minute [1] 21:17</p> <p>minutes [1] 8:19</p> <p>mix [1] 59:17</p> <p>mold [3] 20:20 40:13 43:11</p> <p>molded [2] 16:2 40:7</p> <p>molder [3] 14:6 17:6 20:18</p>	<p>molding [8] 17:14,21 29:24 31:7, 22 34:18 35:14,24</p> <p>money [3] 28:13 37:6 55:12</p> <p>monjot [1] 41:11</p> <p>month [2] 32:6,7</p> <p>monthly [4] 32:4 33:10 55:2 56:7</p> <p>months [2] 12:11 49:9</p> <p>morning [4] 4:7,8 24:2 26:16</p> <p>most [3] 8:17 9:7 10:3</p> <p>mount [15] 22:20 38:8 40:20 41: 6 45:3,9,11,19 46:22 48:17 49:6, 14,20 52:16,20</p> <p>move [2] 40:8,16</p> <p>moved [1] 20:23</p> <p>mrp [1] 28:19</p> <p>ms [2] 56:18,23</p> <p>much [1] 14:13</p> <p>multiple [1] 58:10</p> <p>must [2] 40:2,4</p> <p>myself [1] 11:22</p> <hr/> <p><b>N</b></p> <p>na [1] 3:9</p> <p>nail [1] 5:4</p> <p>name [6] 4:9,13,14 7:15 38:23 43: 20</p> <p>named [3] 47:22 56:13 58:6</p> <p>natural [1] 27:23</p> <p>nature [1] 4:22</p> <p>need [5] 24:10,23 40:16 41:10 42: 9</p> <p>needed [9] 20:5 23:23,25 24:3 29:3 33:20 40:14 50:25 57:1</p> <p>needs [1] 25:10</p> <p>never [10] 14:1 17:23 41:15 42: 23,24 45:21 57:7 60:6,8,9</p> <p>nexcase [1] 40:6</p> <p>nexpak [84] 3:3 9:21 14:24 15:24 16:1,8,10,19,24 17:4,6,10,12,17, 21,24 18:2,8 19:3,8,10,18,19 20: 1,10 23:17,20 25:3,5,12,15,18, 26:10 27:10 28:2,4,7,9,19 29:7,8, 12,19,25 30:8 31:3 32:5 33:8,9, 20,25 34:17 35:4,19,20 36:1,2,7, 8 37:12,20 38:2,24,25 39:4,11, 15,16,16,23 40:22 41:17 42:16, 19,21,22 43:1,7,17 45:13 50:25 51:3 53:7,10</p> <p>nexpak's [3] 33:16,22 42:12</p> <p>next [3] 32:7 42:15 43:7</p> <p>nickle [2] 24:14 54:11</p> <p>nine [2] 12:11 46:16</p> <p>nobody [1] 13:10</p> <p>northern [1] 16:15</p> <p>notary [2] 1:16 62:19</p> <p>note [1] 14:21</p> <p>notes [3] 15:2 32:9 47:3</p> <p>nothing [2] 33:12 57:6</p> <p>notice [7] 3:5,8 7:22 8:4 45:18 52:14 53:2</p> <p>notices [2] 52:20,23</p> <p>notification [1] 23:7</p> <p>notified [1] 23:4</p> <p>november [2] 47:19 49:9</p> <p>number [11] 17:15,16 19:9,25 20: 3 29:8 33:14,16 46:8 55:16 56: 20</p>
--	--	--	--

**O**

obvious <sup>[1]</sup> 27:16  
 occur <sup>[2]</sup> 36:16 37:6  
 october <sup>[3]</sup> 50:6 59:23 62:20  
 offices <sup>[1]</sup> 1:17  
 ohio <sup>[1]</sup> 16:16  
 okay <sup>[13]</sup> 8:22 11:5 13:15 15:12  
 21:14 31:10 36:11 40:5 52:2 53:  
 11 54:3 58:23 60:24  
 once <sup>[2]</sup> 4:21 36:24  
 one <sup>[26]</sup> 2:4 8:17 9:8,18 12:1 14:  
 11 15:17 18:10 19:24 22:20 25:  
 15,22 29:22 30:24 33:22 38:18  
 42:11 50:9,11,12,17 55:1 58:6  
 59:21,22,23  
 ones <sup>[1]</sup> 24:13  
 only <sup>[6]</sup> 18:17 19:19 49:23 50:17  
 57:11 60:19  
 operating <sup>[1]</sup> 36:13  
 opportunity <sup>[1]</sup> 11:12  
 oral <sup>[1]</sup> 62:7  
 order <sup>[14]</sup> 26:5,6,12,19,22 27:8,  
 25 28:7,16,23 32:7 42:8,17 56:  
 25  
 ordered <sup>[3]</sup> 26:11,14 30:12  
 ordering <sup>[4]</sup> 25:4,5 39:8,9  
 orders <sup>[6]</sup> 3:2 20:4 27:18 28:4,5  
 39:24  
 originally <sup>[1]</sup> 49:12  
 other <sup>[18]</sup> 6:22 7:1 10:1 15:5 20:  
 19 21:2,7 24:15 30:11 31:8 35:  
 23,25 36:1 45:9 53:20 57:25 58:  
 4,16  
 out <sup>[13]</sup> 10:2 12:7 14:16 16:12 19:  
 8 31:17 34:14 40:7 41:3 55:14,  
 17,18 57:1  
 over <sup>[6]</sup> 5:12 24:3 28:23 30:19 49:  
 2 50:10  
 overall <sup>[1]</sup> 6:24  
 oversee <sup>[2]</sup> 6:22 7:2  
 owe <sup>[1]</sup> 28:13  
 own <sup>[1]</sup> 25:15  
 owned <sup>[5]</sup> 30:4 31:17 36:21 42:  
 22,23  
 ownership <sup>[3]</sup> 36:13,16 37:11  
 owns <sup>[1]</sup> 36:25

**P**

pa <sup>[2]</sup> 4:17 36:15  
 page <sup>[7]</sup> 3:2 7:9 8:11,18 11:8 32:  
 8 53:1  
 pages <sup>[1]</sup> 46:16  
 paid <sup>[1]</sup> 34:17  
 paper <sup>[2]</sup> 60:12,13  
 paragraph <sup>[2]</sup> 37:11 42:15  
 pardon <sup>[1]</sup> 59:14  
 parks <sup>[24]</sup> 8:8 10:4 11:19 12:2 13:  
 12 15:10,13,18,21 16:14 17:1 18:  
 10 21:12,15,19 47:2 58:14,16,23  
 59:2,15,19 60:4 61:2  
 part <sup>[2]</sup> 46:16 58:21  
 particular <sup>[10]</sup> 16:4 26:22 27:2  
 36:4 40:12 42:5 47:18 49:8 50:  
 16 53:2  
 party <sup>[1]</sup> 44:21  
 past <sup>[2]</sup> 4:18 14:22

pay <sup>[1]</sup> 31:15  
 paying <sup>[4]</sup> 6:23 28:25 30:1,23  
 pc <sup>[1]</sup> 2:3  
 pennsylvania <sup>[8]</sup> 1:2,22 2:10 18:  
 7 20:24 23:2 62:2,15  
 people <sup>[4]</sup> 8:17 11:21 24:15 54:  
 10  
 pep <sup>[2]</sup> 40:9 43:8  
 per <sup>[2]</sup> 29:10,22  
 perhaps <sup>[1]</sup> 10:2  
 period <sup>[11]</sup> 6:17 7:7,9,14 22:24  
 24:11 27:19 28:2 47:20,25 51:20  
 person <sup>[7]</sup> 9:6 10:3 12:17 39:23  
 42:13 57:20 58:5  
 personally <sup>[1]</sup> 62:5  
 personnel <sup>[1]</sup> 6:22  
 pertaining <sup>[1]</sup> 1:15  
 phone <sup>[1]</sup> 19:20  
 phrase <sup>[4]</sup> 12:25 37:15 40:21 42:  
 20  
 piece <sup>[1]</sup> 60:11  
 place <sup>[3]</sup> 22:20 35:10 41:5  
 placed <sup>[3]</sup> 48:14 49:5,13  
 placement <sup>[5]</sup> 3:8 49:18 52:13,  
 20,22  
 plaintiff <sup>[5]</sup> 1:5 2:2 4:2 9:2,13  
 plan <sup>[1]</sup> 16:14  
 plant <sup>[1]</sup> 39:11  
 plastek <sup>[7]</sup> 16:23,24 17:1 20:14  
 37:14 38:6,7  
 plastek's <sup>[1]</sup> 20:16  
 plastic <sup>[3]</sup> 14:17,18 20:18  
 plastics <sup>[18]</sup> 1:7,11 3:9 4:12 5:5  
 6:6,14 8:25 14:5 17:4 33:8 35:  
 11 36:6 44:20,25 45:14 52:19 53:  
 1  
 pleading <sup>[1]</sup> 15:21  
 please <sup>[3]</sup> 5:25 35:2 60:4  
 plumbing <sup>[1]</sup> 14:12  
 point <sup>[7]</sup> 10:6 22:14 29:11 37:3  
 55:19 56:4,19  
 port <sup>[97]</sup> 1:7,11 3:9 4:12 5:5 6:5,  
 11,14,21 7:13 8:25 9:7,16,19,23  
 11:6,22,23 12:10 14:2,4,7 16:1,3,  
 8,18 17:4,25 18:13,15,25 19:3  
 20:11 21:10,12,25 22:3,4,6 23:1,  
 4,7,13,15,17,22 24:6,12,16,21  
 25:9,10,16 27:9,19 28:1,6,25 29:  
 12 33:8,20,24 34:1,11,18,18 35:  
 11,14,18,23 36:6,18,20,25 37:7,  
 20 39:14 41:23 42:2 43:17 44:12,  
 16,20,25 45:6,14 46:14,21,22 47:  
 23 48:11 50:22 52:19 53:1 54:17,  
 19 59:12  
 possession <sup>[1]</sup> 48:17  
 possible <sup>[1]</sup> 58:4  
 possibly <sup>[1]</sup> 57:20  
 pound <sup>[2]</sup> 29:10,22  
 pounds <sup>[4]</sup> 30:23,24,24 32:12  
 prepare <sup>[1]</sup> 14:19  
 prepared <sup>[4]</sup> 15:14 27:18 28:1  
 49:9  
 presence <sup>[1]</sup> 62:8  
 present <sup>[1]</sup> 2:12  
 presque <sup>[26]</sup> 21:16 22:5,7,10 23:  
 10,22,24 24:5,8,20,21,22 25:4,6,

8 27:7 29:5 36:22 45:20 46:13,  
 20 47:17 48:11 50:3,6 53:15  
 presses <sup>[1]</sup> 19:24  
 pretty <sup>[1]</sup> 14:13  
 price <sup>[4]</sup> 29:16 31:13,16 43:11  
 pricing <sup>[3]</sup> 28:14,18 29:19  
 prior <sup>[2]</sup> 12:6,14  
 probably <sup>[2]</sup> 5:11 20:7  
 procedure <sup>[1]</sup> 1:15  
 process <sup>[3]</sup> 15:3 29:11 42:16  
 produce <sup>[3]</sup> 14:7,8 20:9  
 produced <sup>[11]</sup> 8:13,17 11:10,13  
 15:11 17:6 28:11 29:7,13 44:5  
 46:8  
 producing <sup>[1]</sup> 19:14  
 product <sup>[19]</sup> 14:7 18:16,18 20:12  
 22:8,11,15 25:10 28:11,12,18 29:  
 7,13 31:9 34:16 35:15 37:3 38:3  
 43:11  
 production <sup>[6]</sup> 19:13 23:18 40:  
 10 50:23 51:1 58:22  
 products <sup>[5]</sup> 14:8,12,16 20:18  
 39:19  
 provide <sup>[1]</sup> 5:15  
 provided <sup>[3]</sup> 8:15 47:22 53:12  
 public <sup>[1]</sup> 62:19  
 pull <sup>[2]</sup> 41:3 50:3  
 purchase <sup>[17]</sup> 3:2 26:5,6,11,19,  
 22 27:8,18,25 28:4,5,7,16 32:2,7  
 35:15,16  
 purchased <sup>[2]</sup> 17:10,23  
 purchasing <sup>[9]</sup> 6:9,10,16,21,25  
 42:13 54:8 55:7 57:16  
 purpose <sup>[1]</sup> 23:12  
 put <sup>[6]</sup> 22:12 29:1,24 31:8 36:17  
 50:9

**Q**

quantity <sup>[2]</sup> 33:15,18  
 quarter <sup>[2]</sup> 49:23 50:11  
 quarters <sup>[1]</sup> 50:6  
 question <sup>[11]</sup> 5:13,20,24,25 6:4  
 10:13 21:18,22 23:14 27:22,24  
 questions <sup>[6]</sup> 5:14 8:21 13:2,3,4,  
 20  
 quickly <sup>[1]</sup> 40:14  
 quite <sup>[1]</sup> 17:18

**R**

radig <sup>[3]</sup> 38:18,19 41:12  
 rail <sup>[3]</sup> 20:23 21:13 22:15  
 railcar <sup>[7]</sup> 22:19 27:3 42:10 43:8  
 45:18 48:23 50:4  
 railcars <sup>[15]</sup> 9:12,14,18,20,24 10:  
 12 22:12 27:5 40:16 42:18,19,21  
 43:1,3,5  
 rather <sup>[2]</sup> 30:1 60:14  
 raw <sup>[1]</sup> 17:8  
 read <sup>[4]</sup> 8:20,23 57:21,23  
 ready <sup>[1]</sup> 15:6  
 real <sup>[1]</sup> 33:7  
 really <sup>[6]</sup> 4:24 5:9 13:10 15:3 45:  
 8 57:7  
 reasonable <sup>[1]</sup> 5:18  
 recall <sup>[10]</sup> 4:22 13:17,19 37:19  
 40:1 54:19 55:25 56:10,21 60:1  
 receipt <sup>[2]</sup> 29:4 53:22

receipts <sup>[2]</sup> 32:23 54:9  
 receive <sup>[10]</sup> 23:7,9 28:6 34:18 44:  
 12 46:12 47:16 48:1 52:19,22  
 received <sup>[20]</sup> 13:5 27:6 29:4 32:  
 13,14 40:3,4 42:23 45:18,20 48:  
 24 49:18 54:19,25 55:2 56:2,17  
 57:9,12 60:19  
 receiving <sup>[3]</sup> 40:1 45:24 55:9  
 recess <sup>[1]</sup> 47:5  
 recognize <sup>[3]</sup> 32:16 38:15 44:7  
 recollection <sup>[5]</sup> 5:15 13:18 40:  
 11 54:25 56:16  
 record <sup>[7]</sup> 13:7 15:10,14,22 30:  
 16,17 57:23  
 reduced <sup>[1]</sup> 62:8  
 reference <sup>[9]</sup> 8:24,25 15:8 37:23  
 38:4 40:18 41:13 42:25 43:9  
 referenced <sup>[1]</sup> 43:14  
 references <sup>[2]</sup> 9:2 15:24  
 refers <sup>[1]</sup> 12:22  
 reflected <sup>[1]</sup> 49:19  
 regarding <sup>[1]</sup> 55:21  
 regards <sup>[1]</sup> 35:10  
 relationship <sup>[13]</sup> 15:25 16:5,8,  
 21,25 17:5 22:6 28:10 35:19 37:  
 19 43:10 45:9 53:17  
 relative <sup>[1]</sup> 62:12  
 relevant <sup>[4]</sup> 27:19 47:20,24 51:  
 20  
 remain <sup>[1]</sup> 37:12  
 remember <sup>[13]</sup> 5:3 7:17 12:9 14:  
 21,23 15:16 21:21 24:14 54:21  
 55:23 56:6,14 57:13  
 reorganization <sup>[1]</sup> 16:14  
 rep <sup>[4]</sup> 18:17,19,20 41:21  
 repeat <sup>[2]</sup> 6:1,4  
 rephrase <sup>[2]</sup> 6:1 10:13  
 reported <sup>[1]</sup> 49:25  
 reporter <sup>[7]</sup> 4:14 8:2 26:2 44:2  
 46:5 47:10 52:7  
 represent <sup>[4]</sup> 4:9 28:24 54:22 59:  
 8  
 representatives <sup>[1]</sup> 25:16  
 request <sup>[3]</sup> 11:11 12:13,16  
 requests <sup>[1]</sup> 12:10  
 requirements <sup>[8]</sup> 20:6 28:20 41:  
 12,14,23,25 42:3,18  
 reside <sup>[1]</sup> 4:16  
 resin <sup>[48]</sup> 17:17,22,24 18:2,7,16  
 19:1,4,6 21:10,25 23:23 24:1,3,  
 10,23 25:4,5,20 26:13,14,15 27:  
 2 29:22 30:24 31:24 35:15,16,23  
 36:3,6,14,21 37:7,13,17,21 39:7,  
 8,9,24 44:13 45:23 46:13,21 48:  
 23 49:1 50:22  
 resins <sup>[3]</sup> 30:4 35:10 39:24  
 respect <sup>[1]</sup> 11:7  
 response <sup>[6]</sup> 12:16 55:9,24 56:3  
 57:3,5  
 responses <sup>[2]</sup> 12:22 13:5  
 responsibilities <sup>[1]</sup> 6:20  
 responsibility <sup>[1]</sup> 37:18  
 responsible <sup>[3]</sup> 10:11 51:12 56:  
 24  
 responsive <sup>[2]</sup> 11:11 12:13  
 returned <sup>[1]</sup> 55:22

review [2] 11:12 14:25  
 reviewed [1] 8:10  
 rich [6] 7:16,20 13:7 47:1 58:1,2  
 right-hand [2] 26:24 28:21  
 ring [1] 38:23  
 risk [2] 37:11,15  
 role [1] 25:3  
 rule [3] 4:12 8:14,14  
 rules [1] 1:15  
 run [2] 31:8 40:14  
 running [9] 6:24 18:23 19:9,11,  
 22,23,24 20:3,11

## S

sale [1] 30:17  
 sales [5] 18:17,19,20 41:21 56:  
 12  
 salesperson [1] 38:20  
 same [8] 7:9 39:18,18 40:23 41:5  
 42:7,16 46:17  
 sampling [1] 46:10  
 saw [3] 45:21 55:11 56:4  
 saying [2] 44:10 51:15  
 says [6] 10:14 32:5 35:8 37:11  
 48:14 50:16  
 scenario [1] 14:23  
 schaeztle [8] 25:22 39:3,22 41:1  
 42:2 51:11,21,23  
 schedule [6] 39:5,6 40:25 41:2  
 42:13 56:25  
 scheduled [2] 39:23 45:13  
 scheduling [3] 23:2 39:7 41:18  
 scott [1] 2:9  
 scrambled [1] 59:16  
 second [6] 18:10 36:12 48:19,25  
 50:13 56:2  
 see [8] 13:25 18:23 23:18 25:9  
 26:24 44:22 47:4 48:5  
 seeing [3] 13:19 57:13 60:1  
 seen [11] 8:6 11:14,15 14:1 15:20  
 52:12 60:6,8,9,13,15  
 sell [1] 28:9  
 selling [2] 31:13,16  
 send [2] 33:9 53:19  
 sent [15] 20:2 23:13 27:9,20 28:1,  
 4 30:7 33:8,24 35:4 46:21 51:2  
 53:6 58:17 59:11  
 sentence [7] 35:8 36:12 37:10  
 40:12 42:6 43:7,14  
 series [3] 3:9 13:2,19  
 served [2] 12:9 13:2  
 servers [1] 48:5  
 service [1] 41:22  
 services [2] 17:13 31:22  
 session [1] 5:14  
 set [2] 40:23 62:14  
 settled [1] 34:1  
 seven [1] 46:15  
 sheet [7] 47:18 49:8,17,17 50:21,  
 24 51:18  
 sheets [2] 47:24 49:12  
 ship [4] 9:20 38:2 42:17 44:21  
 shipment [6] 10:11 19:1,4,6 23:  
 23 35:10  
 shipments [5] 23:2,5,8 36:6 44:  
 13  
 shipped [8] 17:7 22:15 27:14 33:

15,18,21 44:11 45:22  
 shippers [4] 9:12,24 10:9,15  
 shipping [6] 9:14,17 10:16 37:12,  
 24 38:1  
 short [1] 44:4  
 showing [1] 58:16  
 shows [1] 59:10  
 signature [3] 35:6 61:2,5  
 signed [1] 13:10  
 silo [2] 36:24 37:18  
 silos [1] 36:18  
 similar [2] 46:9 48:10  
 since [4] 26:15 27:4 35:11 49:18  
 situation [2] 35:11,13  
 small [1] 46:10  
 sold [3] 28:18 30:15 39:16  
 somebody [2] 32:21 60:6  
 someone [5] 11:23 32:23 54:7  
 56:8,11  
 sometime [1] 54:23  
 somewhere [1] 16:6  
 sorry [2] 10:13 17:2  
 sort [1] 59:19  
 sounds [1] 40:22  
 specific [1] 33:14  
 specifics [1] 56:21  
 specified [1] 62:11  
 spell [1] 4:13  
 spend [1] 8:19  
 spoke [2] 43:15 55:25  
 spreadsheet [5] 58:12,14,15 59:  
 9,17  
 square [1] 2:4  
 stack [1] 60:14  
 stamped [1] 58:12  
 start [1] 41:11  
 started [2] 5:9 26:15  
 startup [1] 40:9  
 state [1] 4:13  
 states [1] 1:1  
 stay [1] 60:23  
 stenotypy [1] 62:8  
 steve [7] 25:22 39:3 47:22 49:15  
 51:11,17 53:14  
 still [7] 24:16 30:4 31:2 48:2 49:1  
 50:19 54:17  
 stony [1] 4:17  
 stopped [1] 57:10  
 storage [4] 37:14,14 38:6,7  
 stored [1] 36:18  
 straight [3] 3:10 21:20 44:3  
 street [1] 2:5  
 strike [4] 19:16 21:18,22 23:13  
 stroupe [1] 2:9  
 stuff [4] 12:14 14:10 15:3 36:18  
 style [1] 39:20  
 submitted [2] 26:6 31:3  
 subsequent [1] 57:9  
 substance [1] 56:22  
 substantial [1] 46:8  
 summers [1] 39:10  
 superior [1] 11:7  
 supervise [1] 7:13  
 supplied [3] 17:8 23:20 39:17  
 supplier [1] 17:24  
 suppliers [1] 35:23

supply [3] 17:10 25:19 39:14  
 support [1] 40:9  
 sworn [2] 4:3 62:6  
 system [8] 20:8 28:6,17,19 29:2,  
 3,6 30:12

## T

talked [3] 25:8 31:5 41:22  
 tapped [3] 49:24 50:2,15  
 ten [2] 3:11 6:12  
 teresa [3] 1:16 62:4,19  
 term [1] 10:9  
 terminal [14] 22:20 38:9 40:16,  
 19,20 41:2 42:18 45:4,10,12,19  
 48:18 49:14 52:16  
 terms [2] 16:25 31:4  
 testify [1] 62:6  
 testimony [3] 48:9 57:11 60:18  
 texas [1] 18:4  
 text [1] 40:6  
 there's [7] 9:18 13:10 16:7 37:23  
 47:4 49:23 53:4  
 therefore [1] 37:11  
 thereupon [10] 7:24 25:24 33:3  
 38:10 43:24 46:2 47:7 52:4 59:4  
 61:4  
 they've [1] 16:12  
 third [2] 57:20 58:4  
 though [2] 17:22 19:25  
 three [5] 50:6,19 56:19 57:12 60:  
 19  
 thursday [1] 1:12  
 ticket [1] 46:12  
 timing [1] 56:14  
 today [6] 4:11 8:13,16 13:8 16:18  
 24:10  
 together [3] 29:24 31:12 60:23  
 took [1] 50:6  
 top [2] 38:22 53:4  
 topics [7] 8:10,15,18 10:24 11:2,  
 8 13:5  
 total [2] 28:22 30:22  
 toys [1] 14:11  
 trace [1] 4:17  
 tracy [2] 41:20,24  
 transcription [2] 1:21 62:9  
 transfer [4] 22:23 32:3 36:14,16  
 transferred [2] 22:18 52:16  
 transit [2] 37:13,21  
 transition [1] 51:17  
 transport [1] 46:21  
 transportation [3] 1:4 4:10 18:6  
 tried [2] 55:18 56:8  
 trouble [1] 31:2  
 truck [2] 22:17,19  
 trucking [13] 21:16 22:5,7 23:10  
 24:5 29:5 36:23 45:20 46:13 47:  
 17 48:11 50:3 53:16  
 truckload [1] 24:10  
 trucks [3] 27:6 40:8 50:9  
 truth [1] 62:6  
 trying [2] 12:6 14:22  
 two [9] 7:3 26:18 29:24 38:17 50:  
 14 54:10 56:19 57:12 60:19  
 type [12] 14:17 25:13 27:18,25 30:  
 24 35:18 40:23 45:23 47:12 48:  
 10,10 52:12

types [1] 39:18

## U

under [1] 8:13  
 undersigned [1] 1:16  
 understand [10] 5:25 6:2 8:24  
 16:7 17:18 22:14 29:16 30:15 36:  
 17 60:13  
 understanding [32] 7:11 10:8,  
 20 12:25 16:10 20:1,16,22 21:4  
 31:3,6 32:20 33:7 34:14 35:9 36:  
 13,20 37:9,16,25 41:8 42:1,20  
 43:13 44:24 48:13,15,16,21,25  
 49:4 51:8  
 understood [1] 5:21  
 underwood [1] 2:13  
 unique [2] 35:12,13  
 united [1] 1:1  
 until [4] 33:7 36:14 37:7,18  
 up [8] 25:7 26:24 33:6 40:23 45:  
 10 53:4 59:1 60:4  
 updated [1] 19:12  
 updates [2] 19:15,17  
 upper [1] 26:24

## V

value [1] 29:6  
 variety [1] 13:5  
 various [2] 14:8,8  
 vendor [1] 28:8  
 verified [3] 13:9,12 54:8  
 verify [1] 20:4  
 verifying [1] 6:23  
 voice [2] 6:3 60:4  
 vs [1] 1:6

## W

w-i-t-k-o-w-s-k-i [1] 4:15  
 waive [1] 61:2  
 waived [1] 61:5  
 wanted [7] 8:16 17:17 35:8,20,21  
 36:2 40:13  
 wants [1] 40:22  
 way [6] 6:1 8:14 21:5 30:8 36:3  
 42:7  
 weekly [7] 23:9,13,19 45:19 47:  
 17 48:11 49:17  
 western [1] 1:2  
 whatever [4] 14:13 16:4 54:4 58:  
 25  
 whereof [1] 62:14  
 wherever [1] 22:12  
 whether [11] 15:16 23:19 24:2  
 33:13 37:20 45:14 48:5 51:5 53:  
 5 56:10 60:15  
 whoever [3] 33:20 38:2 51:12  
 whole [4] 9:15 29:11 56:15 62:6  
 whom [6] 11:20 26:7,9 33:19,19  
 51:10  
 will [10] 14:13 36:12,14 37:12 40:  
 7,16 42:16,16,17 43:7  
 wilson [2] 7:16 58:1  
 wilson's [1] 58:2  
 without [1] 62:11  
 witkowski [25] 1:10,14 3:8,12 4:  
 1,7,15 7:24 8:2 25:23,24 26:2 33:  
 2,3 34:25 38:10,14 43:24 44:3

46:2 47:7 52:4,8 59:4 61:1  
witness [2] 4:2 62:14  
word [1] 32:2  
words [1] 31:8  
work [4] 6:22 12:7 41:20 42:7  
worked [4] 16:25 17:5 19:8 43:  
12  
working [1] 41:11  
works [2] 8:15 51:23  
written [1] 13:2

---

Y

---

year [1] 12:4  
years [3] 5:1 6:12 14:3

## **EXHIBIT P**



UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

- - -

CSX TRANSPORTATION, INC.,  
Plaintiff,  
vs.  
PORT ERIE PLASTICS, INC.,  
Defendant.

)  
)  
)  
) Civil Action  
)  
) Case No.  
) 05-139 Erie  
)  
)

- - -

Deposition of JOHN UNDERWOOD  
Thursday, February 2, 2006

- - -

The deposition of JOHN UNDERWOOD, called as a witness by the Defendant, pursuant to notice and the Federal Rules of Civil Procedure pertaining to the taking of depositions, taken before me, the undersigned, Teresa Constantini Berardi, a Notary Public in and for the Commonwealth of Pennsylvania, at the law offices of MacDonald Illig Jones & Britton, LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1498, commencing at 10:52 a.m. the day and date above set forth.

- - -

COMPUTER-AIDED TRANSCRIPTION BY  
MORSE, GANTVERG & HODGE, INC.  
ERIE, PENNSYLVANIA  
814-833-1799

- - -

PAGE 2

2

## 1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Janssen & Keenan, P.C.:  
 4 Charles L. Howard, Esquire  
 5 One Commerce Square  
 6 Suite 2050  
 7 2005 Market Street  
 8 Philadelphia, Pennsylvania 19103

7 On behalf of the Defendant:

8 MacDonald Illig Jones & Britton, LLP:  
 9 Richard J. Parks, Esquire  
 10 Scott Stroupe, Esquire  
 11 100 State Street, Suite 700  
 12 Erie, Pennsylvania 16507-1498

## 12 ALSO PRESENT:

13 James Witkowski  
 14 John T. Johnson

15 I-N-D-E-X

## 16 EXAMINATION BY:

PAGE:

17 Mr. Parks

3

54

18 Mr. Howard

50

## 20 UNDERWOOD DEPOSITION EXHIBIT NOS.:

PAGE:

21 1 - Fax dated 2-1-06 attaching letter dated  
 22 2-1-06 from Mr. Howard to Mr. Parks and  
 23 email correspondence

16

24 2 - Document entitled "Additional Customer  
 25 Profile Data"

30

PAGE 3

3

1 JOHN UNDERWOOD

2 Called as a witness by the defendant, having been  
 3 first duly sworn, as hereinafter certified, was  
 4 deposed and said as follows:

## 5 EXAMINATION

6 BY MR. PARKS:

7 Q Could you please state your full name for  
 8 the record?

9 A John Underwood.

10 Q Mr. Underwood, have you ever been subject  
 11 to a deposition before?

12 A Yes, sir.

13 Q And you understand that your testimony  
 14 under oath is being taken to be transcribed into a  
 15 written document; correct?

16 A Yes, sir.

17 Q I would ask you that if I ask a question  
 18 that you don't understand, ask me to repeat it.

19 If I ask you more than one question, please  
 20 feel free to ask me to go back and break it down into  
 21 two questions or three questions.

22 Please wait until I am done and then give  
 23 your answer as correctly as you can under oath.

24 Is that okay?

25 A Okay.

PAGE 4

4

1 Q All right.

2 Mr. Underwood, where are you employed?

3 A I'm employed by CSX Transportation in  
 4 Jacksonville, Florida.

5 Q And what is your business address in  
 6 Jacksonville?

7 A 6737 Southpoint Drive.

8 Q Actually in Jacksonville address?

9 A Yes, sir.

10 Southpoint Drive South.

11 Q And what is your job title?

12 A Manager, supplemental revenue.

13 Q And how many people do you have under you  
 14 in the supplemental revenue department?

15 A There is 21 employees in our department.

16 Q They are all located in Jacksonville?

17 A Yes, sir.

18 Q Does CSX also have an office in Buffalo,  
 19 New York?

20 A They may have a transportation office. I'm  
 21 not for sure.

22 Q If a dispute were to arise related to  
 23 supplemental income, and I assume that is -- is it  
 24 just demurrage or are there other things that are  
 25 associated with that department?

PAGE 5

5

1 A There is other items associated.

2 Q What are the items that CSX designated as  
 3 under your control as supplemental income --

4 A It's items --

5 Q -- or, revenue? Excuse me.

6 A -- designated by our CSXT 8100 tariff,  
 7 which includes demurrage and switching.

8 Q Anything else other than demurrage and  
 9 switching?

10 A There would be weighing.

11 I'd have to -- unabsorbed switching, and  
 12 there may be some others I can't think of right now.

13 Q When did you first become aware personally  
 14 of a dispute for an unpaid claim by CSX against  
 15 Port Erie Plastics?

16 A I believe I -- it's probably been within  
 17 four to six months ago.

18 Q So basically about the time suit was being  
 19 prepared to be filed?

20 A Yes, sir.

21 Q Are you responsible for the referral of  
 22 that suit?

23 A And do you mean by --

24 Q Did you personally pick up an invoice on  
 25 some ledger that CSX was claiming it has an unpaid

SHEET 2 PAGE 6

6

1 invoice, and we're going to take legal action on  
2 this?

3 Is that your first contact with the  
4 Port Erie's issue?

5 A My contact -- we have a supplemental team  
6 that reviews outstanding demurrage bills with  
7 customers, and it would be a decision of that team to  
8 refer them to -- for litigation for collection.

9 Q Was your contact with the Port Erie issue  
10 before or after that decision had been made?

11 A It would have been after that decision was  
12 made.

13 Q So suit was already filed when you first  
14 became aware of this?

15 A Yes, sir.

16 Q Now, do the records of Port Erie -- or,  
17 excuse me.

18 Do the records of CSX indicate that this  
19 was a disputed account?

20 A Yes.

21 Q Do the records also indicate that there was  
22 an investigation concerning who was a party to any  
23 shipping contract with CSX?

24 A I think the investigation was only being  
25 handled with Port Erie.

PAGE 7

7

1 Q Do you have any evidence of or writing that  
2 would show there is a contract between CSX and  
3 Port Erie Plastics?

4 A No, sir.

5 Q Do you have any contracts where CSX is a  
6 party to a shipping contract with BP that is relevant  
7 to the Port Erie Plastics issue?

8 A No, sir.

9 Q Do you have any evidence or anything that  
10 would indicate that Port Erie Plastics was a party to  
11 any shipping contract with any party concerning these  
12 particular railcars?

13 A None that I know of.

14 Q So it is a correct statement to say that  
15 Port Erie Plastics was not a party to the shipping  
16 contract that involved these demurrages, correct,  
17 according to your last statement kind of in reverse  
18 and more succinctly?

19 A The only contract that would be subject  
20 would be under the uniform freight bill of lading,  
21 which would show them as a consignee.

22 Q Now, who controls that bill of lading when  
23 it's produced? As a shipper, who controls that? Who  
24 creates this?

25 A The origin consignor.

PAGE 8

8

1 Q In this particular case, to the best of  
2 your knowledge, that would be BP Amoco; correct?

3 A Correct.

4 Q And BP Amoco made arrangements with who to  
5 ship plastic?

6 A Based on the billing information that I've  
7 seen, they made arrangement with the origin rail  
8 carrier I believe, was Union Pacific Railroad.

9 Q So the correct statement would be that BP  
10 would, in some way, contact Union Pacific and say, "We  
11 want a railcar to fill and ship a railcar full of  
12 resin to some place"; correct?

13 A Correct.

14 Q Okay.

15 Now, the bill of lading would then be  
16 created by BP Amoco in this case?

17 A Yes, sir.

18 Q And who controls the content of that bill  
19 of lading?

20 A BP Amoco.

21 Q And in every instance, do you have a bill  
22 of lading on these claimed for shipments on these  
23 railcars?

24 A Yes, sir.

25 Q Now, do any of those bills of lading

PAGE 9

9

1 indicate that Port Erie Plastics was a shipper?

2 A The bill of ladings indicate that Port Erie  
3 Plastic was a consignee.

4 Q And who was responsible for all of the  
5 shipping charges on each and every one of those bills  
6 of lading?

7 A As I recall, it was BP Amoco.

8 Q So they guaranteed shipping?

9 A They received the freight charges.

10 Q Isn't that the same thing, they guaranteed  
11 shipping as it left their plant?

12 A I would -- I would say under their contract  
13 of the bill of lading, yes.

14 Q Now, there are certain terms of art in your  
15 industry.

16 "Prepaid" means the shipping is paid, you  
17 don't have to collect it at the end; correct?

18 A Correct.

19 Q And what's "free on board"?

20 A I'm not that familiar with it.

21 Q How about "COD"?

22 A Cash on delivery.

23 Q And "free on board," to the best of my  
24 knowledge, is that the party receiving the shipment  
25 has a duty to pay for it not necessarily on delivery;

PAGE 10

10

1 correct?

2 A As you state, yes.

3 Q In other words, they are responsible for  
4 the shipping from the time it left BP's plant to  
5 wherever it went, whoever arranged that contract;  
6 correct?

7 A Correct.

8 Q Did CSX do an investigation of who BP was  
9 shipping to, who had done the sale, who owned the  
10 plastic that was being shipped?

11 A No, sir.

12 Q At no time did you -- you never were  
13 worried about that?

14 A It was not the issue with the railcars, the  
15 intention of the railcars.

16 Q Whose cars did you come into possession of?  
17 Now, these are bulk tank cars with  
18 four compartments, as I understand them; correct?

19 A Covered hopper cars, yes.

20 Q There's four hoppers, and they are filled  
21 with various dry materials, in this particular case,  
22 plastic resin?

23 A Yes, sir.

24 Q And whose cars were they when they left BP?

25 A I'm not sure I know who the owner of the

PAGE 11

11

1 car is.

2 Q And that's because cars are interchanged  
3 among carriers, depending on switching and transfer  
4 points, based on the geographic area that is served by  
5 various carriers; correct?

6 A Basically, railcars and this type of  
7 private cars are leased from a leasing company by a  
8 customer, and they, during this lease, would the cars  
9 to various destinations.

10 Q So they were not owned by Union Pacific?

11 A Probably -- no, they would not be owned by  
12 Union Pacific.

13 Q But they would be leased to Union Pacific?

14 A No. They would probably be leased to BP.

15 Q Okay. So BP sent out a waybill, bill of  
16 lading and they issued that to Union Pacific Railroad,  
17 to the best of your knowledge; correct?

18 A Correct.

19 Q The railcar would go from Texas to where?

20 A It would originate at Texas on Union  
21 Pacific and be given to CSX at an interchange point,  
22 and CSX would deliver the car to Erie.

23 Q What was the interchange point?

24 A I'd have to see one of the waybills. I  
25 don't recall.

PAGE 12

12

1 Q Now, this interchange point, would that  
2 also be an interchange change where Norfolk & Southern  
3 could pick up?

4 A Not necessarily.

5 Q You compete with Norfolk & Southern; don't  
6 you?

7 A Yes, sir.

8 Q And rail carriers actually is very  
9 competitive at this time; isn't it?

10 A Always, yes.

11 Q Your service area is overlapped with  
12 Norfolk & Southern; correct?

13 A In many instances, yes.

14 Q And how is it that you compete with  
15 Norfolk & Southern?

16 You can't cut your rates because they're  
17 published; correct?

18 MR. HOWARD: Object to the form of the  
19 question. It calls for a legal confusion.

20 You can answer.

21 A Rates can be competitive by contracts.

22 Q And did you have any contract with BP?

23 A None that I'm aware of.

24 Q How did CSX get paid for picking up these  
25 cars at a rail point and delivering them to Erie?

PAGE 13

13

1 A The Union Pacific would collect the  
2 freight. We would receive our portion from them.

3 Q So you got payment from Union Pacific?

4 A That's correct.

5 Q And according to the bills of lading that  
6 you've seen, they got paid by BP; correct?

7 A From what I remember, yes.

8 Q Now, when a car arrives in Erie,  
9 Pennsylvania, it's placed on a CSX side rail; correct?

10 A It's brought into a CSX yard, yes.

11 Q And that's not a main line, it's a side  
12 car, and it's put into that particular rail yard;  
13 correct?

14 A Correct.

15 Q In this particular case, notice was given  
16 to whom that the car arrived in Erie?

17 A From what I've seen, the constructive  
18 placement notice was given to Presque Isle Trucking.

19 Q Do you have any record that would show  
20 constructive notice was given directly to Port Erie  
21 Plastics?

22 A None that I've seen.

23 Q And that is different from prior pleadings  
24 that were placed of record in the court; correct?

25 Previously, it was asserted by CSX that

SHEET 3 PAGE 14

14

1 Port Erie was notified of the constructive placement,  
 2 and now you're stating that constructive placement was  
 3 actually given to Presque Isle Trucking; correct?  
 4 A Information that I've seen on fax indicated  
 5 that it did go to Presque Isle Trucking.  
 6 Q And you don't have any place where it was  
 7 given directly to Port Erie Plastics; correct?  
 8 As None that I've seen.  
 9 Q Okay.  
 10 Now, do you know who owned the plastic as  
 11 it was being transported from the BP facility until it  
 12 arrived in Erie?  
 13 A From the documentation that I've seen, it  
 14 was owned by Nexpak.  
 15 Q But Nexpak is not a party to the bill of  
 16 lading; are they?  
 17 A Not that I've seen.  
 18 Q But just as an example, a document that was  
 19 previously produced during Mr. Witkowski's  
 20 deposition -- just for clarity of the record, I'm  
 21 referring to Witkowski Deposition Exhibit No. 5.  
 22 This is the bill of lading that you are  
 23 referring to; correct?  
 24 A Yes, sir.  
 25 Q After these demurrage charges, did

PAGE 15

15

1 anyone -- and when say "you," I do mean CSX as a  
 2 whole, not you personally, and that you have personal  
 3 knowledge of.  
 4 Did anyone at CSX notify Nexpak that their  
 5 plastic was accruing demurrage?  
 6 A We had no contact with Nexpak or did not  
 7 know anything about Nexpak.  
 8 Q Did you have those bills of lading when you  
 9 were accruing these demurrage charges?  
 10 A We did not have these specific bill of  
 11 ladings, no.  
 12 Q So you took transfer of these railcars  
 13 from Union Pacific and you didn't obtain a bill of  
 14 lading?  
 15 A We received an electronic transaction from  
 16 the Union Pacific that give us the waybill information  
 17 and to move the car to the destination.  
 18 Q And that waybill only said a destination?  
 19 A I'm sorry?  
 20 Q The electronic waybill, did that say this  
 21 is --  
 22 A It was the shipper information and the  
 23 consignee information.  
 24 Q And the consignee was what?  
 25 A Port Erie Plastics.

PAGE 16

16

1 Q Where?  
 2 A At Erie, PA.  
 3 Q Did it say "Mount Fort Terminal"?  
 4 A I don't recall if it said that or not.  
 5 Q Okay. I got a fax from your attorney  
 6 yesterday which I will refer to as Underwood  
 7 Deposition No. 1.  
 8 (Thereupon, Underwood Deposition Exhibit  
 9 No. 1 was marked for identification.  
 10 BY MR. PARKS:  
 11 Q Did you see this document before the  
 12 deposition?  
 13 I mean, not necessarily --  
 14 MR. HOWARD: Before today?  
 15 MR. PARKS: Before today, yes, the  
 16 deposition today, yes.  
 17 A Yes, sir.  
 18 Q And the substance of that fax is a series  
 19 of emails from a Billy Graham; correct?  
 20 A Yes, sir.  
 21 Q Did Billy Graham work for you?  
 22 A Did not work for me directly, but he is an  
 23 employee of CSX.  
 24 Q What does Billy Graham do at CSX?  
 25 A He is a customer service representative.

PAGE 17

17

1 Q And before suit was filed against  
 2 Port Erie, was Mr. Graham consulted about disputes by  
 3 Port Erie Plastics to the billing for demurrage by  
 4 CSX?  
 5 A No, sir.  
 6 Q They never had anything to do with that  
 7 before the suit was filed?  
 8 A No, sir.  
 9 Q But he was investigating a problem with  
 10 regard to the demurrage as of January 27th?  
 11 A He was -- January 27th of?  
 12 Q 2006. That's the date of that email to  
 13 you; correct?  
 14 A The date of this email to me was upon my  
 15 research for documents.  
 16 This document that was put together by  
 17 Mr. Graham was in a draft memo file of his, and he  
 18 created that document in 2001, when he was trying to  
 19 determine how to handle the cars that were coming into  
 20 Erie for Port Erie Plastics.  
 21 Q All right.  
 22 Now, when you say "draft memo," are you  
 23 talking about within the email system?  
 24 A Yes, sir.  
 25 Q And the top email to you is dated what



PAGE 18

18

1 date?

2 A January 27th, 2006.

3 Q And it goes through a whole litany of  
4 referring to Mr. Witkowski, his phone number, and  
5 other things concerning this alleged dispute; correct?

6 A Correct.

7 Q You just told me that that was from  
8 December of 2001?

9 A Yes, sir.

10 Q Okay. Why isn't there an email tag that  
11 says December 1st, 2001 within the substance of that  
12 email?

13 A Well, there is some in the substance of the  
14 email.

15 Q But under the CSX email system, the email  
16 tag appears at the top of each email; correct?

17 A That's correct.

18 Q And the email with all of these details was  
19 only created on January 27th, 2006?

20 A The time that he sent this to me was  
21 created on January 27th of 2006.

22 Q Is there any evidence that that was created  
23 before January 27th on that document, January 27th,  
24 2006, that all of the items were typed up?

25 Is there any dating on that that's tagged

PAGE 19

19

1 by the system that shows that that was created in  
2 2001, as you just testified?

3 A For the first, or second part, or --

4 Q The whole first part of that, before the  
5 next tag, the next email tag.

6 A No, there's no other date there.

7 Q And then, in fact, the email tag for the  
8 December 2001 email is a duplicate of the first two  
9 or three lines of the January 27th, 2006 email; isn't  
10 it?

11 A Yes, sir. I see that it is the same.

12 Q What records did your employee, Mr. Graham,  
13 use to create all of that January 27th, 2006 letter?

14 MR. HOWARD: Object to the form of the  
15 question. You're mischaracterizing testimony.

16 MR. PARKS: Well, I'm asking a question,  
17 what documents support.

18 BY MR. PARKS:

19 Q You cannot tell me that he knows  
20 Mr. Witkowski's phone number five years later or  
21 four years later.

22 A Based on my conversation with Mr. Graham,  
23 he had a file that he had kept in draft section that  
24 he was using as information to himself as to how to  
25 work the profile, how to work this customer, and he

PAGE 20

20

1 had it in his draft, and he had it for this number of  
2 years under --

3 Q When you say "work this customer," really,  
4 the substance of those emails from 2001 were, "How do  
5 I undercut Norfolk Southern and get this shipping?  
6 Do we have competitive rates? Do we have a better  
7 tariff that we can get to these people to get more  
8 business?"

9 That's what Mr. Graham did; didn't he?

10 A Mr. Graham was trying to resolve how to get  
11 the car to the proper location for unloading, which  
12 was on CSX, and then he was working with someone to  
13 resolve that issue.

14 Q And never once in there did he say anything  
15 about resolving issues with regard to demurrage, does  
16 he, except for in January of 2006?

17 A I don't believe that was his call of  
18 resolving the demurrage.

19 Q Well, then, what is the purpose of  
20 producing the January 27th, 2006 email from  
21 Mr. Graham?

22 A At the time of 2001, Mr. Graham was  
23 involved in building the customer profile for the  
24 customer to -- which would direct the shipment to the  
25 right location for unloading, and I think he had some

PAGE 21

21

1 confusion as to where the car was to be placed so that  
2 it could be unloaded by Port Erie.

3 Q Who was he working with? Who was his  
4 contact?

5 A Who was his contact when?

6 Q Yes. Back in 2001, who was his contact?

7 A With Port Erie?

8 Q No. Who was his contact with the  
9 customer?

10 You just told me that Port Erie was not  
11 your customer. Who was his contact? Who was he  
12 talking to to get these transfers done more  
13 efficiently?

14 A I'm sorry. I don't understand your  
15 question.

16 Q Okay. You told me that there was never, to  
17 the best of your knowledge, any contract between CSX  
18 and Port Erie Plastics.

19 A That's true.

20 Q And you also told me that there was no  
21 contract, that you know of, between BP -- or, excuse  
22 me, Port Erie and Union Pacific or BP regarding the  
23 shipment of this resin; correct?

24 A Other than the bill of lading, that's  
25 correct.

SHEET 4 PAGE 22

22

1 Q And your customer was actually Union  
 2 Pacific?  
 3 A My customer is Port Erie.  
 4 Q You don't have any contract with Port Erie;  
 5 do you?  
 6 A No.  
 7 Q They're not your customer, they're a place  
 8 where you delivered resin because Union Pacific told  
 9 you to?  
 10 A They're the consignee on record.  
 11 Q And that record was controlled completely  
 12 by BP, not you; correct?  
 13 A That is true.  
 14 Q So if the consignee was incorrect because  
 15 that's where BP put it as a delivery point, you  
 16 wouldn't have any knowledge of that; correct?  
 17 A I have no knowledge other than what was  
 18 furnished to us.  
 19 Q Did you contact Union Pacific and ask them  
 20 how they got Port Erie Plastics, how it was they came  
 21 to designate Port Erie as a consignee on this bill?  
 22 A No, sir.  
 23 Q You relied upon Union Pacific for payment  
 24 of your shipping charges; correct?  
 25 A Correct.

PAGE 23

23

1 Q And you got paid?  
 2 A Correct.  
 3 Q And then with regard to Witkowski  
 4 Deposition Exhibit No. 9, Witkowski Exhibit No. 9, I  
 5 believe the oldest invoice on there, which was  
 6 May 15th, 2002, was well after the last contact that  
 7 Billy Graham had with anybody concerning that series  
 8 of emails, correct, except for the email to you?  
 9 A What was the date there that you said?  
 10 Q May of 2002.  
 11 A Okay. Those were after this, is what  
 12 you're asking me?  
 13 Q Isn't that correct?  
 14 A Yes.  
 15 Q So there wasn't even an issue for  
 16 Billy Graham at the time about demurrage charges?  
 17 A No, because he was not doing demurrage. He  
 18 was working on getting the cars, the railcars, to the  
 19 correct customer.  
 20 Q And within his emails, one of his concerns  
 21 is, do we have a better tariff than NS, which I assume  
 22 is Norfolk Southern; correct?  
 23 A Yes.  
 24 Q Okay. So your primary concern -- or,  
 25 Mr. Graham's primary concern on behalf of CSX was to

PAGE 24

24

1 get that money away from Norfolk Southern and into  
 2 CSX?  
 3 A I can't address his concern.  
 4 He was working on trying to get the railcar  
 5 to the proper destination.  
 6 Q I want to go back to, I guess, the question  
 7 I asked before.  
 8 What is the relevance of Mr. Graham's  
 9 relationship to this lawsuit? Why is he now providing  
 10 you with emails with respect to any relevance to this  
 11 lawsuit?  
 12 A Because he was instrumental in putting  
 13 together the customer profile, and determining where  
 14 the railcar was to be placed when it reached Erie,  
 15 PA.  
 16 Q Now, where were the railcars to be placed?  
 17 A Based on his research, it was determined  
 18 that the railcars were to be placed at Mount Fort  
 19 Terminal.  
 20 Q Which you were aware that Port Erie does  
 21 not own; correct?  
 22 A I'm aware of that.  
 23 Q Were you aware of that at the time that CSX  
 24 was giving constructive placement notices for these  
 25 cars, that they arrived in Erie?

PAGE 25

25

1 A Yes, sir.  
 2 Q So you knew that you weren't giving  
 3 Port Erie Plastics direct notice that railcars were  
 4 arriving?  
 5 A I'm not -- I can't say for sure.  
 6 All I've seen was where the notices were  
 7 going to on my research here.  
 8 Q And that was Presque Isle Trucking?  
 9 A Yes, sir.  
 10 Q Mount Fort Terminal?  
 11 A Presque Isle Trucking.  
 12 Q Did you -- well, it also said Mount Fort  
 13 Terminal on some of the later invoices, didn't it --  
 14 or, bills of lading?  
 15 A All I'm talking about is the constructive  
 16 placement notices.  
 17 Q So they went there, but Presque Isle  
 18 Trucking wasn't the consignee?  
 19 A No, sir.  
 20 Q Didn't you have a duty to give a person  
 21 notice that you want to charge them money?  
 22 MR. HOWARD: Object to the question. Calls  
 23 for a legal conclusion.  
 24 You can answer.  
 25 A Would you ask the question again?

PAGE 26

26

1 Q Yes.

2 Don't you think that CSX has a duty to  
3 notify a person in some way directly that, "We are  
4 going to try and charge you money"?

5 MR. HOWARD: Same objection.

6 A The rail shipments are subject to a  
7 CSXT 8100 tariff, which obligates parties that use  
8 railcars, which describes the services for them, and  
9 it's a matter of public record that a railcar -- a  
10 user of a railcar should have that knowledge.

11 Q Okay.

12 So it's your contention that your tariff  
13 goes so far that you don't have to give me any notice,  
14 but if I receive a product off a railcar,  
15 regardless of who had notice of it, if I receive the  
16 product, I should be responsible for paying a shipping  
17 charge or a demurrage charge?

18 A We would serve notice to the consignee if  
19 there were going to be extra charges for the car  
20 depending on the car type.

21 That information would be transmitted to  
22 the consignee.

23 Q And you just testified that you did not  
24 transfer any of that knowledge to Port Erie Plastics  
25 at any time relevant to this lawsuit; correct?

PAGE 28

28

1 BY MR. PARKS:

2 Q That conversation took place almost  
3 five years later, correct, after his contact with the  
4 customer?

5 A It was his recognition at that time of this  
6 conversation.

7 Q Recollection?

8 A Yeah.

9 Q I understand. All right.

10 MR. PARKS: Now, could you repeat the last  
11 question before the one I just did and ask him  
12 that again, the question before?

13 (Record read.)

14 BY MR. PARKS:

15 Q Could you answer that question?

16 A Would you read it one more time? I'm not  
17 sure what you're asking here.

18 Q Is there any place at any time prior to a  
19 demurrage claim that CSX notified Port Erie Plastics  
20 that it was asserting it was a consignee and would be  
21 responsible for shipments?

22 A None that we would directly communicate.

23 Q Now, with regard to the demurrage tariff  
24 that you say is published --

25 A Yes, sir.

PAGE 27

27

1 A My recollection was a conversation I had  
2 with Mr. Graham when he was trying to work through  
3 this situation, is that he had a conversation with  
4 Port Erie Plastic as to the receipt of the  
5 constructive placement notices to their location, and  
6 the response to him was that, "Do not send the  
7 notifications to us, send them to Presque Isle  
8 Trucking as they are the ones unloading the cars."

9 Q And that's nowhere -- that response, first  
10 of all, did not answer my question and, second of all,  
11 there is nowhere in those emails where that is ever  
12 discussed; is there?

13 A None in the email.

14 Q So you have a person who's trying to market  
15 to a new customer, who doesn't bother to mention to  
16 them that, "Oh, here are your duties, and if we're  
17 going to do business with you, you're going to be  
18 responsible for X, Y and Z," never mentioned anywhere  
19 in those emails; is it?

20 A Just in my conversation with him.

21 Q So it's completely hearsay --

22 MR. HOWARD: Objection.

23 Q -- five years later?

24 MR. HOWARD: Object to the form of the  
25 question.

PAGE 29

29

1 Q -- today your attorney gave me one that was  
2 issued on December 19th, 2002; correct?

3 Is that the tariff that you were referring  
4 to?

5 A Yes. This is effective December 21st,  
6 2001.

7 Q But it was issued what date?

8 A It was issued December 19th, 2002.

9 Q And the first bill that you're trying to  
10 make a claim on is May 15th, 2002; correct?

11 A Yes, sir.

12 Q Where is the tariff from that period of  
13 time?

14 A What is the first date there?

15 Q May 15th, 2002 is the first apparent  
16 invoice date.

17 A This has various supplements to this, to  
18 this tariff.

19 The demurrage information on this  
20 supplement under the demurrage plan is dated  
21 November 26th, 2002.

22 Q Do you have the full tariff that was in  
23 effect as of May 2002?

24 A There was one in effect. Do not have one  
25 with me.

SHEET 5 PAGE 30

30

1 Q So that tariff arose after these demurrage  
2 charges were already allegedly beginning to accrue;  
3 correct?

4 A This is the same tariff that would have  
5 been in place at -- in 2001, with updates to it.

6 Q But you never gave notice of this tariff  
7 directly to Port Erie Plastics; did you?

8 A No, sir.

9 We were not obligated to do so.

10 Q But Mr. Graham was having, according to  
11 those, in 2001 was having conversations, alleged  
12 conversations, with Mr. Witkowski about, you know, how  
13 we get things in, and how he recalled these things  
14 from 2001 but, yet, never shared any information about  
15 the tariff and never asked for acknowledgment that  
16 Port Erie be a party to the shipping contract;  
17 correct?

18 A That's correct.

19 Q Okay.

20 Now, your attorney also gave me a set of  
21 documents that he said that he either got yesterday  
22 afternoon or this morning from you, and I'm going to  
23 refer to those as Underwood Exhibit No. 2.

24 (Thereupon, Underwood Deposition Exhibit  
25 No. 2 was marked for identification.)

PAGE 31

31

1 BY MR. PARKS:

2 Q There are two packets of documents, and  
3 since I haven't had a chance to kind of look at them,  
4 can you identify what those documents are?

5 MR. HOWARD: Do you mind if I put them in  
6 the Bates number order? Because they didn't  
7 come back that way.

8 MR. PARKS: That's fine, that's because the  
9 paper caught in the --

10 MR. HOWARD: That's the order that they  
11 should be in.

12 A This is information from our computer  
13 system for the -- that we create as a customer  
14 profile, that assigns a code that brings the car when  
15 it is received on CSX to the proper destination and  
16 the proper location for unloading.

17 Q Do those indicate that the cars would be  
18 delivered to Mount Fort Terminal?

19 A It indicates that we were showing Port Erie  
20 Plastics as a subset of Mount Fort Terminal.

21 Q What does that mean? Who enters that  
22 information?

23 A The customer service rep responsible for  
24 inputting this information at the time was  
25 Billy Graham.

PAGE 32

32

1 Q When was that information produced? I  
2 mean, when was that document printed off and placed in  
3 the system?

4 MR. HOWARD: This is a better copy. Here  
5 (indicating).

6 A I printed these in January of '06, but the  
7 profile was created on December 17th of '01.

8 Q Now, when you set up a customer profile,  
9 how do you determine -- when you didn't have an  
10 agreement with Port Erie Plastics, how do you  
11 determine who your customer is?

12 A It's based on the consignee information  
13 that we receive.

14 Q Did Mr. Graham contact Nexpak about these?

15 A He had no information about Nexpak.

16 Q All right.

17 Now, with regard to the records of CSX, do  
18 any of the records show a transfer of railcars from  
19 Erie to Canton, Ohio?

20 A I have no records of that.

21 Q Are there records of CSX moving a truck, a  
22 train car, back out of its Erie terminal and sending  
23 it to Nexpak that was originally designated for  
24 Port Erie Plastics?

25 A I don't know.

PAGE 33

33

1 Q Did you look for that?

2 A I was not looking for that, no.

3 Q Did you see the requests for production of  
4 documents that were given to your counsel?

5 A Yes.

6 Q And in there, there was a request for any  
7 records you would have about diverting or transferring  
8 railcars from Erie to Canton, Ohio that were within  
9 this group of shipments; correct?

10 A I don't recall seeing any information.

11 Q Did you look for this information? Do you  
12 recall thinking that, "I need to be able to find out  
13 that information, whether or not it exists"?

14 A I checked with our diversion group, and  
15 they said, unless I had a specific car number, they  
16 probably were not going to be able to determine any  
17 type of diversion on a car.

18 I went through our diversion systems and  
19 did not find any on the search.

20 Q So you would have no record of that?

21 A I could not find any.

22 Q So you wouldn't know whether or not Nexpak  
23 continued to exercise control of these railcars  
24 through delivery to the Mount Fort Terminal?

25 A None that I could find.



PAGE 34

34

1 Q And Nexpak is on the bill of lading,  
2 though; correct?

3 A I did not see Nexpak.

4 The bill of lading information that I  
5 received from the -- from the Union Pacific rail  
6 carrier.

7 Q But the bill of lading clearly shows who  
8 the plastic was sold to; doesn't it?

9 A Yes, it shows that.

10 Q Did your electronic transfers show that?

11 A I did not see that on there.

12 Q Isn't it important to know who the  
13 beneficial interest of your shipments go to with  
14 respect to your tariff for demurrage?

15 A Only if they're the consignee that is  
16 detaining the car or unloading the car.

17 Q What if the party is exercising control  
18 over the car, requiring that they be transferred to a  
19 different location based upon the information from the  
20 shipper, which was BP; correct?

21 A The shipper was BP.

22 Q And you would follow the controls and  
23 directions of the shipper; correct?

24 A Yes.

25 Q Until it's delivered? In fact, the shipper

PAGE 35

35

1 retains control over the shipment?

2 A When you say "shipment," are you talking  
3 about the product or the railcar?

4 Q I'm talking about the railcar that leaves  
5 BP.

6 Until you deliver it to the destination, BP  
7 has a right to hold that train car, they have a right  
8 to divert that train car as the shipper in this  
9 particular case; correct?

10 A They have a right to do those.

11 Q Okay.

12 A The ultimate destination was Erie, PA.

13 Q Now, in your investigation, do your records  
14 show that BP directed you, CSX, to hold a shipment of  
15 four cars because Nexpak filed bankruptcy?

16 A I have seen no records of that.

17 Q Did you look?

18 A Yes.

19 Q So never in any of your shipment records  
20 did anybody exercise control over any shipment of CSX  
21 to the Mount Fort Terminal?

22 A I did not see any.

23 Q I'm going to go back to the question.

24 But you didn't look for that as part of  
25 the -- were other people controlling railcars?

PAGE 36

36

1 A I looked for everything I could determine  
2 when I was reviewing our records that had to do  
3 with -- with Port Erie or any other customers in  
4 there.

5 I did not find those records.

6 Q Okay.

7 On the bills of lading, which is Witkowski  
8 Deposition Exhibit No. 5 -- sorry, I grabbed your  
9 copy -- at the top of those, those are marked  
10 "Prepaid"; correct?

11 A Yes, sir.

12 Q And it says underneath the "COD Information  
13 (If Applicable)," it says "Carriers Send Invoices To:  
14 BP Chemicals," and it says "Carriers"; correct?

15 A It says that.

16 Q Multiple?

17 A What do you mean, "multiple"?

18 Q More than one carrier. It has an S. It  
19 doesn't say "Carrier," it says "Carriers Send Invoices  
20 To: BP Chemicals."

21 A Yes.

22 Q Did you send your invoices for demurrage to  
23 BP Chemicals?

24 A No, sir.

25 Q Why not?

PAGE 37

37

1 A Because this has to do with freight  
2 services, not assessorial charges at destination.

3 Q Where do you see that? Where on that would  
4 I find that information?

5 A It's not written on this document. This is  
6 for the shipment of freight.

7 Q Which is what you did, you shipped freight?

8 A Yes, sir.

9 Q And then you delivered to Mount Fort  
10 Terminal, and once it was delivered to Mount Fort  
11 Terminal, there are no demurrage charges accruing;  
12 correct?

13 A Yes, sir.

14 Q So before you delivered to Mount Fort  
15 Terminal is where all of the demurrage charges would  
16 have had to accrue?

17 A That's correct.

18 Q And once it's in Mount Fort Terminal, which  
19 was your direction, did you send your invoices to  
20 BP Chemicals as directed on this bill of lading?

21 A No, sir.

22 Q Did you send any invoices to Nexpak?

23 A No, sir.

24 Q When there was a contest -- and correct me  
25 if I'm wrong, but the testimony of both Port Erie



SHEET 6 PAGE 38

38

PAGE 40

40

1 people were, from the minute they first got notice of  
2 these charges, they were disputed; correct?

3 A I'm not sure if they were disputed properly  
4 or not.

5 Q When is the first notice of dispute that  
6 CSX has in its hands?

7 A I had a copy from Mr. Witkowski of one of  
8 the demurrage bills that he had written a hand on  
9 it -- handwritten something on it.

10 Q What did he hand write on there?

11 A Something to the effect that, "These bills  
12 need to go away."

13 Q Isn't that a dispute?

14 A Yes, sir.

15 Q And do you have anything prior to that that  
16 acknowledges there was some agreement by Port Erie to  
17 take control or take responsibility for these alleged  
18 demurrage charges?

19 A None that I could see.

20 Q And, in fact, CSX's response to that  
21 dispute was to attempt to get Port Erie as a customer  
22 and put in a rail side for Port Erie; wasn't it?

23 A I read some verbiage to that.

24 Q In fact, there's at least three letters  
25 from CSX people that say, "We'll waive all these

1 each page of the document.

2 Q So it's just a label that CSX puts on a  
3 document?

4 MR. HOWARD: No, no, I put them on. I  
5 Bates labeled all of the documents.

6 MR. PARKS: Okay.

7 MR. HOWARD: Anything that I produce to  
8 anybody in any litigation, I Bates label it.

9 BY MR. PARKS:

10 Q So that's your counsel's, that's not an  
11 internal CSX --

12 A That's true.

13 MR. PARKS: They came on typed, and I  
14 didn't know. I thought it was their indexing.

15 MR. HOWARD: No. That's done on my part.

16 MR. PARKS: So at the bottom of these, that  
17 "CSX0463" --

18 MR. HOWARD: I wrote that. I had my  
19 secretary print up labels and put those on  
20 before I produced them to you.

21 MR. PARKS: Okay.

22 Q Now, Mr. Graham's email from January 27th,  
23 2006, it refers to, "The only information that reaches  
24 Port Erie Plastics concerning a rail car, is receipt  
25 of a shipping notice from BP Amoco in Texas."

PAGE 39

39

1 demurrage charges if you just do business with us."

2 A Okay.

3 Q Isn't that correct?

4 A Correct.

5 Q And, in effect, CSX was holding that over  
6 Port Erie's head trying to get a new customer; weren't  
7 they?

8 A I can't testify to the marketing's intent  
9 at the time.

10 Q That was from the marketing department?

11 A Yes, sir.

12 Q Not from your department?

13 A No, sir.

14 Q Not from accounting?

15 A No, sir.

16 Q So your marketing -- the people who were in  
17 charge of creating business, they have the ability to  
18 waive demurrage charges over your say so; correct?

19 A They can do that, yes.

20 Q All right.

21 Just more as matter of -- what is a Bates  
22 label?

23 A Are you asking me?

24 Q Yes.

25 A It's my understanding a way to identify

PAGE 41

41

1 MR. HOWARD: Where is that, Rich?

2 MR. PARKS: About, I would say, the third  
3 paragraph that starts with "On arrival," and  
4 then it would be the third line down after  
5 "Terminal (referred to locally as 'Codan.')" "

6 MR. HOWARD: Yes.

7 A Okay.

8 Q Do you know why Mount Fort Terminal became  
9 Codan?

10 A No, sir.

11 Q Is that an internal -- I mean, is there a  
12 registry of --

13 A Don't know.

14 Q Then it says, "The only information that  
15 reaches Port Erie Plastics concerning a rail car, is  
16 receipt of a shipping notice from BP Amoco in Texas."

17 Do you know how he knew that, whether or  
18 not there was any shipping notice?

19 A I'm only assuming in his discussion with  
20 Mr. Witkowski, that's how that information was relayed  
21 to him.

22 Q So you don't know personally?

23 A No, sir.

24 Q And what's a transflo operation?

25 A Transflo operation is a CSX facility that

PAGE 42

42

1 unloads railcars similar to the type of product that  
2 Port Erie was receiving except it's a CSX-owned  
3 facility.

4 Q But you knew at the time that, in effect,  
5 the transflo would have been Presque Isle Trucking,  
6 then?

7 A No, sir.

8 Transflo would not -- this would not have  
9 been a transflo facility. It was not a CSX-owned  
10 facility.

11 Q But that's what Presque Isle did, was  
12 unload railcars for delivery by a non-rail serviced  
13 party?

14 A Presque Isle was an agent for Port Erie  
15 unloading their cars.

16 Q And do you know whether Port Erie was an  
17 agent for --

18 A No, sir.

19 Q Did you look?

20 A Look at what?

21 Q Did you find out who they were acting as an  
22 agent for?

23 A It was nothing that I knew anything about.

24 Q So why aren't you suing Presque Isle?

25 A Because they're not the consignee on

PAGE 43

43

1 record.

2 Q But they're the parties you sent it to.  
3 That's the one you constructively noticed under the  
4 bill of lading. You constructively noticed  
5 Presque Isle Trucking.

6 Why didn't you bill them?

7 A We constructively noticed Presque Isle  
8 Trucking as agent for Port Erie, who is the consignee  
9 on record.

10 Q Did you then investigate Port Erie once  
11 they disputed to see if they were acting as an agent  
12 for Nexpak?

13 A No, sir.

14 Q Okay.

15 Going down to November 26th, 2001,  
16 Billy Graham to Dean Piacente, that's part of Exhibit  
17 No. 1, why is it that Billy Graham was asking -- I  
18 assume Dean Piacente, is he also a CSX employee?

19 A Yes, sir.

20 Q What does he do?

21 A Best of recollection, he's in marketing.

22 Q So it's another sales guy?

23 A Yes, sir.

24 Q And it says -- well, Billy Graham was a  
25 sales guy, and he's talking to another sales guy.

PAGE 44

44

1 Why is he asking, "Do we have a  
2 'competitive rate' that could influence this movement  
3 via," I'm assuming, "Union Pacific," I don't know what  
4 the "ESTL" means, then obviously it's "CSX Transport  
5 direct."

6 A Well, first, Billy Graham is not in  
7 marketing. His involvement in that is very  
8 restricted.

9 The "ESTL" is an interchange junction from  
10 the Union Pacific which is abbreviated for  
11 East St. Louis.

12 And based on what I read, there was some  
13 cars that were being delivered to the NS which they  
14 were giving to CSX for a switch delivery.

15 And at this point, it was determined that  
16 Port Erie Plastics was closed to switching for the  
17 NS, so there was no way for the NS to deliver that  
18 traffic to us without us being part of the freight  
19 rate.

20 Q Well, so Norfolk Southern was involved in  
21 these shipments?

22 A Based on what -- this information here, it  
23 appears that they were at one time.

24 Q But we don't have any record of anything  
25 with Norfolk & Southern except for these 2001 emails?

PAGE 45

45

1 A No, I would not have any records with the  
2 NS.

3 Q So is it your testimony that Norfolk  
4 Southern was somehow at this relevant time taken out  
5 of the loop?

6 A I can't say that for sure.

7 Q Well, who would CSX negotiate that with?

8 I mean, if you're trying to undercut  
9 Norfolk Southern, which is the big body of these  
10 emails, you're trying to take them out of the loop,  
11 who did they negotiate that with?

12 A If there was any contact, it would have to  
13 be with the shipper.

14 Q Which would be BP?

15 A Yes, sir.

16 Q So, again, you never notified Port Erie  
17 that you were trying to affect the shipping costs on  
18 this plastic that you're asserting they somehow had an  
19 interest in?

20 A It was not relevant.

21 Q It's only relevant because you didn't get  
22 paid your consignee charges from BP; correct?

23 MR. HOWARD: Objection to the form.

24 BY MR. PARKS:

25 Q Well, you can answer.

SHEET 7 PAGE 46

46

1 A I'm not sure.

2 Q Why isn't that relevant? Why is it not  
3 relevant, what you were doing to market these  
4 shipments?

5 A This has to do with freight charges, not  
6 assessorial charges after the fact, after the shipment  
7 was received.

8 Q So everything Billy Graham had to do was  
9 irrelevant to this suit?

10 A No.

11 The fact that the part on the routing of  
12 the car was not relevant with the NS to this suit.

13 Q What's a reciprocal switch?

14 A A reciprocal switch is a car that we  
15 receive at destination from another rail carrier, and  
16 we deliver that car to a customer for them and receive  
17 a switch charge from that other rail carrier.

18 Q Well, that doesn't make sense, because this  
19 email says, "Cars are destined for a rail Customer  
20 located on the CSXT, open to reciprocal switch, called  
21 'Mountfort Terminal'."

22 Mount Fort Terminal was not a reciprocal  
23 switch carrier, so I can't reconcile what you just  
24 said.

25 It's at the very bottom of page -- the one

PAGE 48

48

1 Q So this was Billy Graham telling Union  
2 Pacific, "Don't charge us for those switches because  
3 it's" --

4 A No, that's not what he's saying.

5 Q Okay. What is he saying?

6 A He's just saying that Mount Fort Terminal,  
7 as he was seeing it, was open to reciprocal switch.

8 Q But why is "called" in there then? The  
9 word "called," "reciprocal switch, called 'Mountfort  
10 Terminal'"?

11 A He's just speaking to the name of the  
12 customer.

13 I'm not sure of his verbiage.

14 Q But at the top of the last page, 465, you  
15 were aware that BP was providing incorrect bill of  
16 lading information at that time?

17 A That's the statement that Mr. Graham  
18 indicates.

19 Q So you knew the bills of lading were wrong?

20 A And he's dealing with the route of the car  
21 for a CSX switch delivery.

22 Q But you had notice that the bills of lading  
23 were incorrect, incorrect bill of lading information,  
24 "The furnished route is UP Eastern Saint Louis Norfolk  
25 Southern, should be UP Norfolk Southern with CSX

PAGE 47

47

1 that's designated as CSX 464, the very bottom of the  
2 page, the last few lines --

3 A Oh.

4 Q -- for October 30th, 2001.

5 Mount Fort Terminal was never a carrier.

6 A What he was saying at that time, that he  
7 was open -- Mount Fort Terminal was open to receive  
8 cars from other rail carriers on CSX.

9 Q But that's not what a reciprocal switch is,  
10 from your testimony.

11 Your testimony was, basically, it was from  
12 carrier to carrier, in effect, the way a MAC machine  
13 would work, is that if you waive your charge to my  
14 customers, I'll waive my charge to your customers.

15 That's what you described to me as the  
16 reciprocal switch.

17 Now, this Billy Graham is telling this  
18 Mr. Elliott at Union Pacific that they have "open to  
19 reciprocal switch, called 'Mountfort Terminal'."

20 A He's speaking as Mount Fort Terminal as a  
21 customer open -- open to reciprocal switching, which  
22 would entitle another carrier to deliver the car to  
23 us, and would obligate us to place that car into that  
24 facility and receive a switch charge instead of part  
25 of the line haul rate.

PAGE 49

49

1 switch delivery."

2 So there's other information on this bill  
3 of lading that you know is correct from here  
4 (indicating) as of October 30th, 2001; correct?

5 A It had to do with how to route the car to  
6 the destination where the car was to be unloaded.

7 Q Yes. But you're looking to correct the  
8 Amoco billing pattern at that time, and BP and Amoco  
9 by that time were merged companies; correct?

10 As far as the plastic resins, BP Amoco is  
11 interchangeable?

12 A I can't speak to that.

13 Q But in this particular one up above, you're  
14 talking about UP is furnished, and then they are  
15 talking about Amoco, and that is where these resins in  
16 question originated; correct?

17 A I would agree.

18 MR. PARKS: Okay. If I can just take a  
19 break for a second, I have one more document I  
20 want to ask you about.

21 (Discussion off the record.)

22 ---

23 (Thereupon, from 11:53 a.m. to 1:01 p.m., a  
24 luncheon recess was taken.)

25 ---

PAGE 50

50

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 BY MR. PARKS:

3 Q Mr. Underwood, I believe the last course of  
4 questioning, if not the last question, was, were you  
5 aware of BP directing the holding of the delivery of  
6 any railcars at the time Nexpak filed bankruptcy?

7 A No, sir.

8 Q And did you have the opportunity to examine  
9 the records of CSX to determine whether or not there  
10 were any hold orders or directions by the shipper to  
11 withhold any of the railcars that would be subject to  
12 this demurrage or subject to delivery at Mount Fort  
13 Terminal?

14 A Best I could determine, yes, sir.

15 Q And there were no such hold orders?

16 A None that I found.

17 MR. PARKS: I don't think I have any  
18 further questions for you.

19 MR. HOWARD: I have a few questions.

20 EXAMINATION

21 BY MR. HOWARD:

22 Q Mr. Underwood, referring you to --

23 MR. HOWARD: Rich, did you mark the  
24 Graham email?

25 MR. PARKS: Graham was marked as Underwood

PAGE 51

51

1 Deposition 1.

2 MR. HOWARD: Okay.

3 BY MR. HOWARD:

4 Q Mr. Parks asked you some questions about  
5 Underwood Exhibit 1.

6 Do you recall that?

7 A Yes, sir.

8 Q It's the email from Mr. Graham to you dated  
9 January 27th, 2006?

10 A Yes, sir.

11 Q And that was a document that, on the 27th,  
12 you sent to me; correct?

13 A Yes, sir.

14 Q What is your understanding of what  
15 Mr. Graham forwarded to you on the 27th?

16 A I was trying to get an understanding of  
17 his part in the customer profile, how it was created,  
18 and the contact people that were on the customer  
19 profile for delivery of the railcars to Port Erie  
20 Plastics.

21 Q Is there anything in the email that he sent  
22 to you that has anything to do with demurrage?

23 A No, sir.

24 Q About halfway down the page, there's a  
25 sentence that begins, "The Erie situation is beginning

PAGE 52

52

1 to be understood."

2 Do you see that?

3 A Yes, sir.

4 Q And on the top of the very top of the next  
5 page, there's a sentence that ends, "from the old  
6 days."

7 Do you see that?

8 A Yes, sir.

9 Q Do you have an understandings of when  
10 Mr. Witkowski wrote all of the text that appears from  
11 first sentence that I pointed you to, to the last  
12 sentence?

13 MR. PARKS: I'm sorry. Mr. Witkowski?

14 MR. HOWARD: I'm sorry. Thank you.

15 Mr. Graham.

16 BY MR. HOWARD:

17 Q Do you have an understanding of when  
18 Mr. Graham wrote that particular text?

19 A It was my understanding from Mr. Graham it  
20 was sometime during the December 2001 time frame.

21 Q And what is the basis of that  
22 understanding?

23 A Conversation I had with Mr. Graham  
24 concerning his document.

25 Q And when did you have that conversation?

PAGE 53

53

1 A I talked to him yesterday.

2 Q That would be February 1st, 2006; correct?

3 A Yes.

4 Q On the last page of the email thread that  
5 we have here, and as part of the email, it's dated  
6 October 30th, 2001, Mr. Graham makes reference to --  
7 he says, "it appears that UP is being furnished via  
8 EDI 404 incorrect bill of lading information."

9 What is "EDI 404"?

10 A "EDI 404" is the electronic billing  
11 information that BP would have originated for the  
12 shipment.

13 Q And what is your understanding of the error  
14 that Mr. Graham is referring to?

15 A He's referring to how the car is routed.

16 Q We previously marked this morning an  
17 exhibit, Witkowski 5, which is a copy of a straight  
18 bill of lading form.

19 Have you seen this before?

20 A Yes, sir. Today.

21 Q Does the routing information appear  
22 anywhere on the bill of lading?

23 A Yes, sir.

24 Q Where does that appear?

25 A Shows under the "Carrier/Routing" and reads



SHEET 8 PAGE 54

54

1 "UP East St. Louis CSXT."  
 2 Q And that bill of lading is from June of  
 3 2004; correct?  
 4 A Correct.  
 5 Q And you have produced -- or, CSX has  
 6 produced waybills in this litigation.  
 7 Do you recall viewing those?  
 8 A Yes, sir.  
 9 Q Would those waybills have routing  
 10 information on them?  
 11 A Yes, sir.  
 12 Q Would the EDI forms that CSX received from  
 13 Union Pacific, would they have had routing information  
 14 on them?  
 15 A Yes, sir, I believe so.  
 16 Q If those waybills and EDI forms showed  
 17 "UP ESTL CSXT" as the routing, would it be your  
 18 conclusion that this error that Mr. Graham points out  
 19 in December of 2001 had been corrected by the time the  
 20 shipments at issue here were made?  
 21 A Yes, sir.  
 22 MR. HOWARD: That's all I have.  
 23 EXAMINATION  
 24 BY MR. PARKS:  
 25 Q With regard to that correction, that's not

PAGE 56

56

1 A No, sir.  
 2 MR. PARKS: No further questions.  
 3 MR. HOWARD: We're off the record now.  
 4 THE COURT REPORTER: Signature?  
 5 MR. HOWARD: Yes.  
 6 ---  
 7 (Thereupon, at 1:08 p.m., the deposition  
 8 was concluded.)  
 9 ---  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

PAGE 55

55

1 anywhere in the writing; is it?  
 2 Your understanding that this had been  
 3 corrected by this time, that's not reflected in any of  
 4 these writings, is it, it's your understanding from  
 5 talking to Mr. Graham?  
 6 A It is my understanding of reviewing this  
 7 information with Mr. Graham.  
 8 Q And with regard to these documents that are  
 9 represented in Underwood Deposition Exhibit No. 1,  
 10 those are not regular business records maintained by  
 11 CSX in any way; are they?  
 12 A Which document are we referring to?  
 13 MR. HOWARD: This (indicating).  
 14 BY MR. PARKS:  
 15 Q The emails from Mr. Graham, starting with  
 16 the one dated January 27th, 2006.  
 17 A And your question is?  
 18 Q That is not a regular business record  
 19 maintained by CSX; is it?  
 20 A This document here (indicating)?  
 21 Q Yes, sir.  
 22 A No, sir, it's not.  
 23 Q It's not anything you keep in your  
 24 accounting and require as a procedure of your  
 25 employees?

PAGE 57

57

1 SIGNATURE PAGE  
 2  
 3  
 4  
 5 John Underwood  
 6  
 7 Subscribed and sworn to before me this  
 8 \_\_\_\_ day of \_\_\_\_, 2006.  
 9  
 10  
 11 Notary Public  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25



## CERTIFICATE

1  
2 COMMONWEALTH OF PENNSYLVANIA, )  
3 COUNTY OF ALLEGHENY. ) SS:

4 I, Teresa Constantini Berardi, do hereby certify  
5 that before me, a Notary Public in and for the  
6 Commonwealth aforesaid, personally appeared  
7 JOHN UNDERWOOD, who then was by me first duly  
8 cautioned and sworn to testify the truth, the whole  
9 truth, and nothing but the truth in the taking of his  
oral deposition in the cause aforesaid; that the  
testimony then given by him as above set forth was by  
me reduced to stenotypy in the presence of said  
witness, and afterwards transcribed by means of  
computer-aided transcription.

10 I do further certify that this deposition was  
11 taken at the time and place in the foregoing caption  
specified, and was completed without adjournment.

12 I do further certify that I am not a relative,  
13 counsel or attorney of either party, or otherwise  
interested in the event of this action.

14 IN WITNESS WHEREOF, I have hereunto set my hand  
15 and affixed my seal of office at Pittsburgh,  
16 Pennsylvania, on this \_\_\_\_ day of \_\_\_\_\_,  
2006.

17  
18  
19 Teresa Constantini Berardi, Notary Public  
20 In and for the Commonwealth of Pennsylvania  
My commission expires October 9, 2008.

21 - - -  
22  
23  
24  
25

<p><b>0</b></p> <p>01 [1] 32:7 06 [1] 32:6</p> <hr/> <p><b>1</b></p> <p>1 [7] 2:21 16:7,9 43:17 51:1,5 55:9 1:01 [1] 49:23 1:08 [1] 56:7 10:52 [1] 1:17 11:53 [1] 49:23 15th [3] 23:6 29:10,15 16 [1] 2:21 16507-1498 [2] 1:17 2:10 17th [1] 32:7 19th [2] 29:2,8 1st [2] 18:11 53:2</p> <hr/> <p><b>2</b></p> <p>2 [4] 1:11 2:23 30:23,25 2-1-06 [1] 2:21 2001 [19] 17:18 18:8,11 19:2,8 20:4,22 21:6 29:6 30:5,11,14 43:15 44:25 47:4 49:4 52:20 53:6 54:19 2002 [8] 23:6,10 29:2,8,10,15,21,23 2004 [1] 54:3 2005 [1] 2:5 2006 [14] 1:11 17:12 18:2,19,21,24 19:9,13 20:16,20 40:23 51:9 53:2 55:16 2008 [1] 58:20 21 [1] 4:15 21st [1] 29:5 26th [2] 29:21 43:15 27th [15] 17:10,11 18:2,19,21,23,23 19:9,13 20:20 40:22 51:9,11,15 55:16</p> <hr/> <p><b>3</b></p> <p>3 [1] 2:17 30 [1] 2:23 30th [3] 47:4 49:4 53:6</p> <hr/> <p><b>4</b></p> <p>404 [3] 53:8,9,10 464 [1] 47:1 465 [1] 48:14</p> <hr/> <p><b>5</b></p> <p>5 [3] 14:21 36:8 53:17</p> <hr/> <p><b>6</b></p> <p>6737 [1] 4:7</p> <hr/> <p><b>8</b></p> <p>8100 [2] 5:6 26:7</p> <hr/> <p><b>9</b></p> <p>9 [3] 23:4,4 58:20</p> <hr/> <p><b>A</b></p> <p>a-f-t-e-r-n-o-o-n [1] 50:1 a.m [2] 1:17 49:23 abbreviated [1] 44:10 ability [1] 39:17 able [2] 33:12,16</p>	<p>above [1] 49:13 according [3] 7:17 13:5 30:10 account [1] 6:19 accounting [2] 39:14 55:24 accrue [2] 30:2 37:16 accruing [3] 15:5,9 37:11 acknowledges [1] 38:16 acknowledgment [1] 30:15 acting [2] 42:21 43:11 action [2] 6:1 58:13 actually [4] 4:8 12:8 14:3 22:1 additional [1] 2:23 address [3] 4:5,8 24:3 adjournment [1] 58:11 affect [1] 45:17 aforesaid [2] 58:5,7 afternoon [1] 30:22 agent [5] 42:14,17,22 43:8,11 ago [1] 5:17 agree [1] 49:17 agreement [2] 32:10 38:16 alleged [3] 18:5 30:11 38:17 allegedly [1] 30:2 allegheeny [1] 58:3 almost [1] 28:2 already [2] 6:13 30:2 amoco [11] 8:2,4,16,20 9:7 40:25 41:16 49:8,8,10,15 among [1] 11:3 another [4] 43:22,25 46:15 47:22 answer [6] 3:23 12:20 25:24 27:10 28:15 45:25 anybody [3] 23:7 35:20 40:8 apparent [1] 29:15 appear [2] 53:21,24 appearances [1] 2:1 appeared [1] 58:5 appears [4] 18:16 44:23 52:10 53:7 applicable [1] 36:13 area [2] 11:4 12:11 aren't [1] 42:24 arise [1] 4:22 arose [1] 30:1 arranged [1] 10:5 arrangement [1] 8:7 arrangements [1] 8:4 arrival [1] 41:3 arrived [3] 13:16 14:12 24:25 arrives [1] 13:8 arriving [1] 25:4 art [1] 9:14 asserted [1] 13:25 asserting [2] 28:20 45:18 assessorial [2] 37:2 46:6 assigns [1] 31:14 associated [2] 4:25 5:1 assume [3] 4:23 23:21 43:18 assuming [2] 41:19 44:3 attaching [1] 2:21 attempt [1] 38:21 attorney [3] 16:5 29:1 30:20 aware [8] 5:13 6:14 12:23 24:20,22,23 48:15 50:5 away [2] 24:1 38:12</p> <hr/> <p><b>B</b></p>	<p>back [6] 3:20 21:6 24:6 31:7 32:22 35:23 bankruptcy [2] 35:15 50:6 based [8] 8:6 11:4 19:22 24:17 32:12 34:19 44:12,22 basically [3] 5:18 11:6 47:11 basis [1] 52:21 bates [4] 31:6 39:21 40:5,8 became [2] 6:14 41:8 become [1] 5:13 beginning [2] 30:2 51:25 begins [1] 51:25 behalf [3] 2:2,7 23:25 believe [6] 5:16 8:8 20:17 23:5 50:3 54:15 beneficial [1] 34:13 berardi [3] 1:15 58:4,19 best [6] 8:1 9:23 11:17 21:17 43:21 50:14 better [3] 20:6 23:21 32:4 between [3] 7:2 21:17,21 big [1] 45:9 bill [28] 7:20,22 8:15,18,21 9:2,13 11:15 14:15,22 15:10,13 21:24 22:21 29:9 34:1,4,7 37:20 43:4,6 48:15,23 49:2 53:8,18,22 54:2 billing [4] 8:6 17:3 49:8 53:10 bills [11] 6:6 8:25 9:5 13:5 15:8 25:14 36:7 38:8,11 48:19,22 billy [13] 16:19,21,24 23:7,16 31:25 43:16,17,24 44:6 46:8 47:17 48:1 board [2] 9:19,23 body [1] 45:9 both [1] 37:25 bother [1] 27:15 bottom [3] 40:16 46:25 47:1 bp [36] 7:6 8:2,4,9,16,20 9:7 10:8,24 11:14,15 12:22 13:6 14:11 21:21,22 22:12,15 34:20,21 35:5,6,14 36:14,20,23 37:20 40:25 41:16 45:14,22 48:15 49:8,10 50:5 53:11 bp's [1] 10:4 break [2] 3:20 49:19 brings [1] 31:14 britton [2] 1:16 2:8 brought [1] 13:10 buffalo [1] 4:18 building [1] 20:23 bulk [1] 10:17 business [7] 4:5 20:8 27:17 39:1,17 55:10,18</p> <hr/> <p><b>C</b></p> <p>call [1] 20:17 called [7] 1:13 3:2 46:20 47:19 48:8,9,9 calls [2] 12:19 25:22 came [2] 22:20 40:13 cannot [1] 19:19 canton [2] 32:19 33:8 car [30] 11:1,22 13:8,12,16 15:17 20:11 21:1 26:19,20 31:14 32:22 33:15,17 34:16,16,18 35:7,8 40:24 41:15 46:12,14,16 47:22,23 48:20 49:5,6 53:15</p>	<p>carrier [11] 8:8 34:6 36:18,19 46:15,17,23 47:5,12,12,22 carrier/routing [1] 53:25 carriers [7] 11:3,5 12:8 36:13,14,19 47:8 cars [18] 10:16,17,19,24 11:2,7,8 12:25 17:19 23:18 24:25 27:8 31:17 35:15 42:15 44:13 46:19 47:8 case [5] 8:1,16 10:21 13:15 35:9 cash [1] 9:22 caught [1] 31:9 cause [1] 58:7 cautioned [1] 58:6 certain [1] 9:14 certificate [1] 58:1 certified [1] 3:3 certify [3] 58:4,10,12 chance [1] 31:3 change [1] 12:2 charge [10] 25:21 26:4,17,17 39:17 46:17 47:13,14,24 48:2 charges [18] 9:5,9 14:25 15:9 22:24 23:16 26:19 30:2 37:2,11,15 38:2,18 39:1,18 45:22 46:5,6 checked [1] 33:14 chemicals [4] 36:14,20,23 37:20 civil [1] 1:14 claim [3] 5:14 28:19 29:10 claimed [1] 8:22 claiming [1] 5:25 clarity [1] 14:20 clearly [1] 34:7 closed [1] 44:16 cod [2] 9:21 36:12 codan [1] 41:9 codan.' [1] 41:5 code [1] 31:14 collect [2] 9:17 13:1 collection [1] 6:8 come [2] 10:16 31:7 coming [1] 17:19 commencing [1] 1:17 commerce [1] 2:4 commission [1] 58:20 commonwealth [2] 58:2,5 communicate [1] 28:22 companies [1] 49:9 company [1] 11:7 compartments [1] 10:18 compete [2] 12:5,14 competitive [4] 12:9,21 20:6 44:2 completed [1] 58:11 completely [2] 22:11 27:21 computer [1] 31:12 computer-aided [2] 1:20 58:9 concern [3] 23:24,25 24:3 concerning [7] 6:22 7:11 18:5 23:7 40:24 41:15 52:24 concerns [1] 23:20 concluded [1] 56:8 conclusion [2] 25:23 54:18 confusion [2] 12:19 21:1 consignee [16] 7:21 9:3 15:23,24 22:10,14,21 25:18 26:18,22 28:20 32:12 34:15 42:25 43:8 45:2</p>
---	--	---	--

22  
**consignor** [1] 7:25  
**constantini** [3] 1:15 58:4,19  
**constructive** [7] 13:17,20 14:1,2  
 24:24 25:15 27:5  
**constructively** [3] 43:3,4,7  
**consulted** [1] 17:2  
**contact** [16] 6:3,5,9 8:10 15:6 21:  
 4,5,6,8,11 22:19 23:6 28:3 32:14  
 45:12 51:18  
**content** [1] 8:18  
**contention** [1] 26:12  
**contest** [1] 37:24  
**continued** [1] 33:23  
**contract** [13] 6:23 7:2,6,11,16,19  
 9:12 10:5 12:22 21:17,21 22:4  
 30:16  
**contracts** [2] 7:5 12:21  
**control** [6] 5:3 33:23 34:17 35:1,  
 20 38:17  
**controlled** [1] 22:11  
**controlling** [1] 35:25  
**controls** [4] 7:22,23 8:18 34:22  
**conversation** [8] 19:22 27:1,3,  
 20 28:2,6 52:23,25  
**conversations** [2] 30:11,12  
**copy** [4] 32:4 36:9 38:7 53:17  
**correct** [7] 3:15 7:14,16 8:2,3,9,  
 12,13 9:17,18 10:1,6,7,18 11:5,  
 17,18 12:12,17 13:4,6,9,13,14,  
 24 14:3,7,23 16:19 17:13 18:5,6,  
 16,17 21:23,25 22:12,16,24,25  
 23:2,8,13,19,22 24:21 26:25 28:  
 3 29:2,10 30:3,17,18 33:9 34:2,  
 20,23 35:9 36:10,14 37:12,17,24  
 38:2 39:3,4,18 45:22 49:3,4,7,9,  
 16 51:12 53:2 54:3,4  
**corrected** [2] 54:19 55:3  
**correction** [1] 54:25  
**correctly** [1] 3:23  
**correspondence** [1] 2:22  
**costs** [1] 45:17  
**counsel** [1] 33:4  
**counsel's** [1] 40:10  
**county** [1] 58:3  
**course** [1] 50:3  
**court** [3] 1:1 13:24 56:4  
**covered** [1] 10:19  
**create** [2] 19:13 31:13  
**created** [8] 8:16 17:18 18:19,21,  
 22 19:1 32:7 51:17  
**creates** [1] 7:24  
**creating** [1] 39:17  
**csx** [54] 1:4 4:3,18 5:2,14,25 6:18,  
 23 7:2,5 10:8 11:21,22 12:24 13:  
 9,10,25 15:1,4 16:23,24 17:4 18:  
 15 20:12 21:17 23:25 24:2,23 26:  
 2 28:19 31:15 32:17,21 35:14,20  
 38:6,25 39:5 40:2,11 41:25 43:  
 18 44:4,14 45:7 47:1,8 48:21,25  
 50:9 54:5,12 55:11,19  
**csx's** [1] 38:20  
**csx-owned** [2] 42:2,9  
**csx0463** [1] 40:17  
**csxt** [5] 5:6 26:7 46:20 54:1,17  
**customer** [28] 2:23 11:8 16:25

19:25 20:3,23,24 21:9,11 22:1,3,  
 7 23:19 24:13 27:15 28:4 31:13,  
 23 32:8,11 38:21 39:6 46:16,19  
 47:21 48:12 51:17,18  
**customers** [4] 6:7 36:3 47:14,14  
**cut** [1] 12:16

## D

**date** [9] 1:17 17:12,14 18:1 19:6  
 23:9 29:7,14,16  
**dated** [7] 2:21,21 17:25 29:20 51:  
 8 53:5 55:16  
**dating** [1] 18:25  
**day** [2] 1:17 58:15  
**days** [1] 52:6  
**dealing** [1] 48:20  
**dean** [2] 43:16,18  
**december** [9] 18:8,11 19:8 29:2,  
 5,8 32:7 52:20 54:19  
**decision** [3] 6:7,10,11  
**defendant** [3] 1:8 2:7 3:2  
**deliver** [5] 11:22 35:6 44:17 46:  
 16 47:22  
**delivered** [7] 22:8 31:18 34:25  
 37:9,10,14 44:13  
**delivering** [1] 12:25  
**delivery** [11] 9:22,25 22:15 33:24  
 42:12 44:14 48:21 49:1 50:5,12  
 51:19  
**demurrage** [29] 4:24 5:7,8 6:6  
 14:25 15:5,9 17:3,10 20:15,18  
 23:16,17 26:17 28:19,23 29:19,  
 20 30:1 34:14 36:22 37:11,15 38:  
 8,18 39:1,18 50:12 51:22  
**demurrages** [1] 7:16  
**department** [5] 4:14,15,25 39:10,  
 12  
**depending** [2] 11:3 26:20  
**deposed** [1] 3:4  
**deposition** [17] 1:10,13 3:11 14:  
 20,21 16:7,8,12,16 23:4 30:24  
 36:8 51:1 55:9 56:7 58:7,10  
**described** [1] 47:15  
**describes** [1] 26:8  
**designate** [1] 22:21  
**designated** [4] 5:2,6 32:23 47:1  
**destination** [9] 15:17,18 24:5 31:  
 15 35:6,12 37:2 46:15 49:6  
**destinations** [1] 11:9  
**destined** [1] 46:19  
**details** [1] 18:18  
**detaining** [1] 34:16  
**determine** [7] 17:19 32:9,11 33:  
 16 36:1 50:9,14  
**determined** [2] 24:17 44:15  
**determining** [1] 24:13  
**different** [2] 13:23 34:19  
**direct** [3] 20:24 25:3 44:5  
**directed** [2] 35:14 37:20  
**directing** [1] 50:5  
**direction** [1] 37:19  
**directions** [2] 34:23 50:10  
**directly** [6] 13:20 14:7 16:22 26:  
 3 28:22 30:7  
**discussed** [1] 27:12  
**discussion** [2] 41:19 49:21  
**dispute** [6] 4:22 5:14 18:5 38:5,

13,21  
**disputed** [4] 6:19 38:2,3 43:11  
**disputes** [1] 17:2  
**district** [2] 1:1,2  
**diversion** [3] 33:14,17,18  
**divert** [1] 35:8  
**diverting** [1] 33:7  
**document** [16] 2:23 3:15 14:18  
 16:11 17:16,18 18:23 32:2 37:5  
 40:1,3 49:19 51:11 52:24 55:12,  
 20  
**documentation** [1] 14:13  
**documents** [8] 17:15 19:17 30:  
 21 31:2,4 33:4 40:5 55:8  
**doing** [2] 23:17 46:3  
**done** [4] 3:22 10:9 21:12 40:15  
**down** [4] 3:20 41:4 43:15 51:24  
**draft** [4] 17:17,22 19:23 20:1  
**drive** [2] 4:7,10  
**dry** [1] 10:21  
**duly** [1] 3:3  
**duplicate** [1] 19:8  
**during** [3] 11:8 14:19 52:20  
**duties** [1] 27:16  
**duty** [3] 9:25 25:20 26:2

## E

**each** [3] 9:5 18:16 40:1  
**east** [2] 44:11 54:1  
**eastern** [1] 48:24  
**edi** [5] 53:8,9,10 54:12,16  
**effect** [6] 29:23,24 38:11 39:5 42:  
 4 47:12  
**effective** [1] 29:5  
**efficiently** [1] 21:13  
**either** [1] 30:21  
**electronic** [4] 15:15,20 34:10 53:  
 10  
**elliott** [1] 47:18  
**email** [26] 2:22 17:12,14,23,25 18:  
 10,12,14,15,15,16,18 19:5,7,8,9  
 20:20 23:8 27:13 40:22 46:19 50:  
 24 51:8,21 53:4,5  
**emails** [10] 16:19 20:4 23:8,20  
 24:10 27:11,19 44:25 45:10 55:  
 15  
**employed** [2] 4:2,3  
**employee** [3] 16:23 19:12 43:18  
**employees** [2] 4:15 55:25  
**end** [1] 9:17  
**ends** [1] 52:5  
**enters** [1] 31:21  
**entitle** [1] 47:22  
**entitled** [1] 2:23  
**erie** [68] 1:7,21 2:10 5:15 6:9,16,  
 25 7:3,7,10,15 9:1,2 11:22 12:25  
 13:8,16,20 14:1,7,12 15:25 16:2  
 17:2,3,20,20 21:2,7,10,18,22 22:  
 3,4,20,21 24:14,20,25 25:3 26:  
 24 27:4 28:19 30:7,16 31:19 32:  
 10,19,22,24 33:8 35:12 36:3 37:  
 25 38:16,21,22 40:24 41:15 42:2,  
 14,16 43:8,10 44:16 45:16 51:19,  
 25  
**erie's** [2] 6:4 39:6  
**error** [2] 53:13 54:18  
**esquire** [1] 2:9

**estl** [3] 44:4,9 54:17  
**even** [1] 23:15  
**event** [1] 58:13  
**everything** [2] 36:1 46:8  
**evidence** [3] 7:1,9 18:22  
**examination** [3] 3:5 50:20 54:23  
**examine** [1] 50:8  
**example** [1] 14:18  
**except** [4] 20:16 23:8 42:2 44:25  
**excuse** [3] 5:5 6:17 21:21  
**exercise** [2] 33:23 35:20  
**exercising** [1] 34:17  
**exhibit** [11] 14:21 16:8 23:4,4 30:  
 23,24 36:8 43:16 51:5 53:17 55:  
 9  
**exists** [1] 33:13  
**expires** [1] 58:20  
**extra** [1] 26:19

## F

**facility** [6] 14:11 41:25 42:3,9,10  
 47:24  
**fact** [6] 19:7 34:25 38:20,24 46:6,  
 11  
**familiar** [1] 9:20  
**far** [2] 26:13 49:10  
**fax** [4] 2:21 14:4 16:5,18  
**february** [2] 1:11 53:2  
**federal** [1] 1:14  
**feel** [1] 3:20  
**few** [2] 47:2 50:19  
**file** [2] 17:17 19:23  
**filed** [6] 5:19 6:13 17:1,7 35:15  
 50:6  
**fill** [1] 8:11  
**filled** [1] 10:20  
**find** [7] 33:12,19,21,25 36:5 37:4  
 42:21  
**fine** [1] 31:8  
**first** [15] 3:3 5:13 6:3,13 19:3,4,8  
 27:9 29:9,14,15 38:1,5 44:6 52:  
 11  
**five** [3] 19:20 27:23 28:3  
**florida** [1] 4:4  
**follow** [1] 34:22  
**follows** [1] 3:4  
**form** [5] 12:18 19:14 27:24 45:23  
 53:18  
**forms** [2] 54:12,16  
**fort** [19] 16:3 24:18 25:10,12 31:  
 18,20 33:24 35:21 37:9,10,14,18  
 41:8 46:22 47:5,7,20 48:6 50:12  
**forwarded** [1] 51:15  
**found** [1] 50:16  
**four** [5] 5:17 10:18,20 19:21 35:  
 15  
**frame** [1] 52:20  
**free** [3] 3:20 9:19,23  
**freight** [8] 7:20 9:9 13:2 37:1,6,7  
 44:18 46:5  
**full** [3] 3:7 8:11 29:22  
**furnished** [4] 22:18 48:24 49:14  
 53:7  
**further** [4] 50:18 56:2 58:10,12

## G

**gave** [3] 29:1 30:6,20

**geographic** [1] 11:4  
**getting** [1] 23:18  
**give** [4] 3:22 15:16 25:20 26:13  
**given** [7] 11:21 13:15,18,20 14:3, 7 33:4  
**giving** [3] 24:24 25:2 44:14  
**got** [7] 13:3,6 16:5 22:20 23:1 30: 21 38:1  
**grabbed** [1] 36:8  
**graham** [39] 16:19,21,24 17:2,17 19:12,22 20:9,10,21,22 23:7,16 27:2 30:10 31:25 32:14 43:16,17, 24 44:6 46:8 47:17 48:1,17 50: 24,25 51:8,15 52:15,18,19,23 53: 6,14 54:18 55:5,7,15  
**graham's** [3] 23:25 24:8 40:22  
**group** [2] 33:9,14  
**guaranteed** [2] 9:8,10  
**guess** [1] 24:6  
**guy** [3] 43:22,25,25

## H

**halfway** [1] 51:24  
**hand** [3] 38:8,10 58:14  
**handle** [1] 17:19  
**handled** [1] 6:25  
**hands** [1] 38:6  
**handwritten** [1] 38:9  
**haul** [1] 47:25  
**head** [1] 39:6  
**hearsay** [1] 27:21  
**hereby** [1] 58:4  
**hereinafter** [1] 3:3  
**hereunto** [1] 58:14  
**himself** [1] 19:24  
**hold** [4] 35:7,14 50:10,15  
**holding** [2] 39:5 50:5  
**hopper** [1] 10:19  
**hoppers** [1] 10:20  
**howard** [28] 12:18 16:14 19:14 25:22 26:5 27:22,24 31:5,10 32: 4 40:4,7,15,18 41:1,6 45:23 50: 19,21,23 51:2,3 52:14,16 54:22 55:13 56:3,5

## I

**identification** [2] 16:9 30:25  
**identify** [2] 31:4 39:25  
**illig** [2] 1:16 2:8  
**important** [1] 34:12  
**inc** [2] 1:4,7  
**includes** [1] 5:7  
**income** [2] 4:23 5:3  
**incorrect** [5] 22:14 48:15,23,23 53:8  
**indexing** [1] 40:14  
**indicate** [6] 6:18,21 7:10 9:1,2 31:17  
**indicated** [1] 14:4  
**indicates** [2] 31:19 48:18  
**indicating** [4] 32:5 49:4 55:13, 20  
**industry** [1] 9:15  
**influence** [1] 44:2  
**information** [35] 8:6 14:4 15:16, 22,23 19:24 26:21 29:19 30:14 31:12,22,24 32:1,12,15 33:10,11,

13 34:4,19 36:12 37:4 40:23 41: 14,20 44:22 48:16,23 49:2 53:8, 11,21 54:10,13 55:7  
**inputting** [1] 31:24  
**instance** [1] 8:21  
**instances** [1] 12:13  
**instead** [1] 47:24  
**instrumental** [1] 24:12  
**intent** [1] 39:8  
**intention** [1] 10:15  
**interchange** [5] 11:21,23 12:1,2 44:9  
**interchangeable** [1] 49:11  
**interchanged** [1] 11:2  
**interest** [2] 34:13 45:19  
**interested** [1] 58:13  
**internal** [2] 40:11 41:11  
**investigate** [1] 43:10  
**investigating** [1] 17:9  
**investigation** [4] 6:22,24 10:8 35:13  
**invoice** [4] 5:24 6:1 23:5 29:16  
**invoices** [6] 25:13 36:13,19,22 37:19,22  
**involved** [3] 7:16 20:23 44:20  
**involvement** [1] 44:7  
**irrelevant** [1] 46:9  
**isle** [13] 13:18 14:3,5 25:8,11,17 27:7 42:5,11,14,24 43:5,7  
**isn't** [9] 9:10 12:9 18:10 19:9 23: 13 34:12 38:13 39:3 46:2  
**issue** [7] 6:4,9 7:7 10:14 20:13 23:15 54:20  
**issued** [4] 11:16 29:2,7,8  
**issues** [1] 20:15  
**items** [4] 5:1,2,4 18:24

## J

**jacksonville** [4] 4:4,6,8,16  
**james** [1] 2:13  
**janssen** [1] 2:3  
**january** [15] 17:10,11 18:2,19,21, 23,23 19:9,13 20:16,20 32:6 40: 22 51:9 55:16  
**job** [1] 4:11  
**john** [5] 1:10,13 3:1,9 57:5  
**jones** [2] 1:16 2:8  
**junction** [1] 44:9  
**june** [1] 54:2

## K

**keenan** [1] 2:3  
**keep** [1] 55:23  
**kept** [1] 19:23  
**kind** [2] 7:17 31:3  
**knowledge** [9] 8:2 9:24 11:17 15:3 21:17 22:16,17 26:10,24  
**knows** [1] 19:19

## L

**label** [3] 39:22 40:2,8  
**labeled** [1] 40:5  
**labels** [1] 40:19  
**lading** [31] 7:20,22 8:15,19,22,25 9:6,13 11:16 13:5 14:16,22 15:8, 14 21:24 25:14 34:1,4,7 36:7 37: 20 43:4 48:16,19,22,23 49:3 53:

8,18,22 54:2  
**ladings** [2] 9:2 15:11  
**last** [9] 7:17 23:6 28:10 47:2 48: 14 50:3,4 52:11 53:4  
**later** [5] 19:20,21 25:13 27:23 28: 3  
**law** [1] 1:16  
**lawsuit** [3] 24:9,11 26:25  
**lease** [1] 11:8  
**leased** [3] 11:7,13,14  
**leasing** [1] 11:7  
**least** [1] 38:24  
**leaves** [1] 35:4  
**ledger** [1] 5:25  
**left** [3] 9:11 10:4,24  
**legal** [3] 6:1 12:19 25:23  
**letter** [2] 2:21 19:13  
**letters** [1] 38:24  
**line** [3] 13:11 41:4 47:25  
**lines** [2] 19:9 47:2  
**litany** [1] 18:3  
**litigation** [3] 6:8 40:8 54:6  
**llp** [1] 2:8  
**locally** [1] 41:5  
**located** [2] 4:16 46:20  
**location** [5] 20:11,25 27:5 31:16 34:19  
**look** [7] 31:3 33:1,11 35:17,24 42: 19,20  
**looked** [1] 36:1  
**looking** [2] 33:2 49:7  
**loop** [2] 45:5,10  
**louis** [3] 44:11 48:24 54:1  
**luncheon** [1] 49:24

## M

**mac** [1] 47:12  
**macdonald** [2] 1:16 2:8  
**machine** [1] 47:12  
**made** [5] 6:10,12 8:4,7 54:20  
**main** [1] 13:11  
**maintained** [2] 55:10,19  
**manager** [1] 4:12  
**many** [2] 4:13 12:13  
**mark** [1] 50:23  
**marked** [5] 16:9 30:25 36:9 50: 25 53:16  
**market** [3] 2:5 27:14 46:3  
**marketing** [4] 39:10,16 43:21 44: 7  
**marketing's** [1] 39:8  
**materials** [1] 10:21  
**matter** [2] 26:9 39:21  
**mean** [8] 5:23 15:1 16:13 31:21 32:2 36:17 41:11 45:8  
**means** [2] 9:16 44:4  
**memo** [2] 17:17,22  
**mention** [1] 27:15  
**mentioned** [1] 27:18  
**merged** [1] 49:9  
**mind** [1] 31:5  
**minute** [1] 38:1  
**mischaracterizing** [1] 19:15  
**money** [3] 24:1 25:21 26:4  
**months** [1] 5:17  
**morning** [2] 30:22 53:16  
**mount** [19] 16:3 24:18 25:10,12

31:18,20 33:24 35:21 37:9,10,14, 18 41:8 46:22 47:5,7,20 48:6 50: 12  
**mountfort** [3] 46:21 47:19 48:9  
**move** [1] 15:17  
**movement** [1] 44:2  
**moving** [1] 32:21  
**multiple** [2] 36:16,17

## N

**name** [2] 3:7 48:11  
**necessarily** [3] 9:25 12:4 16:13  
**need** [2] 33:12 38:12  
**negotiate** [2] 45:7,11  
**never** [11] 10:12 17:6 20:14 21: 16 27:18 30:6,14,15 35:19 45:16 47:5  
**new** [3] 4:19 27:15 39:6  
**nexpak** [15] 14:14,15 15:4,6,7 32: 14,15,23 33:22 34:1,3 35:15 37: 22 43:12 50:6  
**next** [3] 19:5,5 52:4  
**non-rail** [1] 42:12  
**none** [9] 7:13 12:23 13:22 14:8 27:13 28:22 33:25 38:19 50:16  
**norfolk** [13] 12:2,5,12,15 20:5 23: 22 24:1 44:20,25 45:3,9 48:24, 25  
**notary** [3] 1:15 57:11 58:19  
**nothing** [1] 42:23  
**notice** [15] 13:15,18,20 25:3,21 26:13,15,18 30:6 38:1,5 40:25 41:16,18 48:22  
**noticed** [3] 43:3,4,7  
**notices** [4] 24:24 25:6,16 27:5  
**notifications** [1] 27:7  
**notified** [3] 14:1 28:19 45:16  
**notify** [2] 15:4 26:3  
**november** [2] 29:21 43:15  
**nowhere** [2] 27:9,11  
**ns** [6] 23:21 44:13,17,17 45:2 46: 12  
**number** [5] 18:4 19:20 20:1 31:6 33:15

## O

**oath** [2] 3:14,23  
**object** [4] 12:18 19:14 25:22 27: 24  
**objection** [3] 26:5 27:22 45:23  
**obligate** [1] 47:23  
**obligated** [1] 30:9  
**obligates** [1] 26:7  
**obtain** [1] 15:13  
**obviously** [1] 44:4  
**october** [4] 47:4 49:4 53:6 58:20  
**office** [2] 4:18,20  
**offices** [1] 1:16  
**ohio** [2] 32:19 33:8  
**okay** [22] 3:24,25 8:14 11:15 14:9 16:5 18:10 21:16 23:11,24 26:11 30:19 35:11 36:6 39:2 40:6,21 41:7 43:14 48:5 49:18 51:2  
**old** [1] 52:5  
**oldest** [1] 23:5  
**once** [4] 20:14 37:10,18 43:10  
**one** [18] 2:4 3:19 9:5 11:24 23:20



28:11,16 29:1,24,24 36:18 38:7  
 43:3 44:23 46:25 49:13,19 55:16  
 ones [1] 27:8  
 only [9] 6:24 7:19 15:18 18:19 34:  
 15 40:23 41:14,19 45:21  
 open [7] 46:20 47:7,7,18,21,21  
 48:7  
 operation [2] 41:24,25  
 opportunity [1] 50:8  
 oral [1] 58:7  
 order [2] 31:6,10  
 orders [2] 50:10,15  
 origin [2] 7:25 8:7  
 originally [1] 32:23  
 originate [1] 11:20  
 originated [2] 49:16 53:11  
 other [13] 4:24 5:1,8 10:3 18:5  
 19:6 21:24 22:17 35:25 36:3 46:  
 17 47:8 49:2  
 others [1] 5:12  
 out [7] 11:15 32:22 33:12 42:21  
 45:4,10 54:18  
 outstanding [1] 6:6  
 over [5] 34:18 35:1,20 39:5,18  
 overlapped [1] 12:11  
 own [1] 24:21  
 owned [5] 10:9 11:10,11 14:10,  
 14  
 owner [1] 10:25

## P

p.c [1] 2:3  
 p.m [2] 49:23 56:7  
 pa [3] 16:2 24:15 35:12  
 pacific [22] 8:8,10 11:10,12,13,  
 16,21 13:1,3 15:13,16 21:22 22:  
 2,8,19,23 34:5 44:3,10 47:18 48:  
 2 54:13  
 packets [1] 31:2  
 page [8] 40:1 46:25 47:2 48:14  
 51:24 52:5 53:4 57:1  
 paid [5] 9:16 12:24 13:6 23:1 45:  
 22  
 paper [1] 31:9  
 paragraph [1] 41:3  
 parks [27] 2:17 3:6 16:10,15 19:  
 16,18 28:1,10,14 31:1,8 40:6,9,  
 13,16,21 41:2 45:24 49:18 50:2,  
 17,25 51:4 52:13 54:24 55:14 56:  
 2  
 part [10] 19:3,4 35:24 40:15 43:  
 16 44:18 46:11 47:24 51:17 53:5  
 particular [8] 7:12 8:1 10:21 13:  
 12,15 35:9 49:13 52:18  
 parties [2] 26:7 43:2  
 party [10] 6:22 7:6,10,11,15 9:24  
 14:15 30:16 34:17 42:13  
 pattern [1] 49:8  
 pay [1] 9:25  
 paying [1] 26:16  
 payment [2] 13:3 22:23  
 pennsylvania [6] 1:2,21 2:10 13:  
 9 58:2,15  
 people [7] 4:13 20:7 35:25 38:1,  
 25 39:16 51:18  
 period [1] 29:12  
 person [3] 25:20 26:3 27:14

personal [1] 15:2  
 personally [5] 5:13,24 15:2 41:  
 22 58:5  
 pertaining [1] 1:14  
 phone [2] 18:4 19:20  
 piacente [2] 43:16,18  
 pick [2] 5:24 12:3  
 picking [1] 12:24  
 place [7] 8:12 14:6 22:7 28:2,18  
 30:5 47:23  
 placed [7] 13:9,24 21:1 24:14,16,  
 18 32:2  
 placement [6] 13:18 14:1,2 24:  
 24 25:16 27:5  
 plaintiff [2] 1:5 2:2  
 plan [1] 29:20  
 plant [2] 9:11 10:4  
 plastic [10] 8:5 9:3 10:10,22 14:  
 10 15:5 27:4 34:8 45:18 49:10  
 plastics [25] 1:7 5:15 7:3,7,10,15  
 9:1 13:21 14:7 15:25 17:3,20 21:  
 18 22:20 25:3 26:24 28:19 30:7  
 31:20 32:10,24 40:24 41:15 44:  
 16 51:20  
 pleadings [1] 13:23  
 please [3] 3:7,19,22  
 point [6] 11:21,23 12:1,25 22:15  
 44:15  
 pointed [1] 52:11  
 points [2] 11:4 54:18  
 port [54] 1:7 5:15 6:4,9,16,25 7:3,  
 7,10,15 9:1,2 13:20 14:1,7 15:25  
 17:2,3,20 21:2,7,10,18,22 22:3,4,  
 20,21 24:20 25:3 26:24 27:4 28:  
 19 30:7,16 31:19 32:10,24 36:3  
 37:25 38:16,21,22 39:6 40:24 41:  
 15 42:2,14,16 43:8,10 44:16 45:  
 16 51:19  
 portion [1] 13:2  
 possession [1] 10:16  
 prepaid [2] 9:16 36:10  
 prepared [1] 5:19  
 presence [1] 58:8  
 present [1] 2:12  
 presque [13] 13:18 14:3,5 25:8,  
 11,17 27:7 42:5,11,14,24 43:5,7  
 previously [3] 13:25 14:19 53:16  
 primary [2] 23:24,25  
 print [1] 40:19  
 printed [2] 32:2,6  
 prior [3] 13:23 28:18 38:15  
 private [1] 11:7  
 probably [4] 5:16 11:11,14 33:16  
 problem [1] 17:9  
 procedure [2] 1:14 55:24  
 produce [1] 40:7  
 produced [6] 7:23 14:19 32:1 40:  
 20 54:5,6  
 producing [1] 20:20  
 product [4] 26:14,16 35:3 42:1  
 production [1] 33:3  
 profile [8] 19:25 20:23 24:13 31:  
 14 32:7,8 51:17,19  
 proper [4] 20:11 24:5 31:15,16  
 properly [1] 38:3  
 providing [2] 24:9 48:15

public [3] 26:9 57:11 58:19  
 published [2] 12:17 28:24  
 purpose [1] 20:19  
 put [7] 13:12 17:16 22:15 31:5 38:  
 22 40:4,19  
 puts [1] 40:2  
 putting [1] 24:12

## Q

question [18] 3:17,19 12:19 19:  
 15,16 21:15 24:6 25:22,25 27:10,  
 25 28:11,12,15 35:23 49:16 50:4  
 55:17  
 questioning [1] 50:4  
 questions [6] 3:21,21 50:18,19  
 51:4 56:2

## R

rail [14] 8:7 12:8,25 13:9,12 26:6  
 34:5 38:22 40:24 41:15 46:15,17,  
 19 47:8  
 railcar [10] 8:11,11 11:19 24:4,14  
 26:9,10,14 35:3,4  
 railcars [20] 7:12 8:23 10:14,15  
 11:6 15:12 23:18 24:16,18 25:3  
 26:8 32:18 33:8,23 35:25 42:1,  
 12 50:6,11 51:19  
 railroad [2] 8:8 11:16  
 rate [2] 44:19 47:25  
 rate' [1] 44:2  
 rates [3] 12:16,21 20:6  
 reached [1] 24:14  
 reaches [2] 40:23 41:15  
 read [4] 28:13,16 38:23 44:12  
 reads [1] 53:25  
 really [1] 20:3  
 recall [7] 9:7 11:25 16:4 33:10,12  
 51:6 54:7  
 recalled [1] 30:13  
 receipt [3] 27:4 40:24 41:16  
 receive [8] 13:2 26:14,15 32:13  
 46:15,16 47:7,24  
 received [6] 9:9 15:15 31:15 34:  
 5 46:7 54:12  
 receiving [2] 9:24 42:2  
 recess [1] 49:24  
 reciprocal [10] 46:13,14,20,22  
 47:9,16,19,21 48:7,9  
 recognition [1] 28:5  
 recollection [3] 27:1 28:7 43:21  
 reconcile [1] 46:23  
 record [15] 3:8 13:19,24 14:20  
 22:10,11 26:9 28:13 33:20 43:1,  
 9 44:24 49:21 55:18 56:3  
 records [17] 6:16,18,21 19:12 32:  
 17,18,20,21 33:7 35:13,16,19 36:  
 2,5 45:1 50:9 55:10  
 reduced [1] 58:8  
 refer [3] 6:8 16:6 30:23  
 reference [1] 53:6  
 referral [1] 5:21  
 referred [1] 41:5  
 referring [8] 14:21,23 18:4 29:3  
 50:22 53:14,15 55:12  
 refers [1] 40:23  
 reflected [1] 55:3  
 regard [7] 17:10 20:15 23:3 28:

23 32:17 54:25 55:8  
 regarding [1] 21:22  
 regardless [1] 26:15  
 registry [1] 41:12  
 regular [2] 55:10,18  
 related [1] 4:22  
 relationship [1] 24:9  
 relative [1] 58:12  
 relayed [1] 41:20  
 relevance [2] 24:8,10  
 relevant [8] 7:6 26:25 45:4,20,21  
 46:2,3,12  
 relied [1] 22:23  
 remember [1] 13:7  
 rep [1] 31:23  
 repeat [2] 3:18 28:10  
 reporter [1] 56:4  
 representative [1] 16:25  
 represented [1] 55:9  
 request [1] 33:6  
 requests [1] 33:3  
 require [1] 55:24  
 requiring [1] 34:18  
 research [3] 17:15 24:17 25:7  
 resin [4] 8:12 10:22 21:23 22:8  
 resins [2] 49:10,15  
 resolve [2] 20:10,13  
 resolving [2] 20:15,18  
 respect [2] 24:10 34:14  
 response [3] 27:6,9 38:20  
 responsibility [1] 38:17  
 responsible [7] 5:21 9:4 10:3 26:  
 16 27:18 28:21 31:23  
 restricted [1] 44:8  
 retains [1] 35:1  
 revenue [3] 4:12,14 5:5  
 reverse [1] 7:17  
 reviewing [2] 36:2 55:6  
 reviews [1] 6:6  
 rich [2] 41:1 50:23  
 route [3] 48:20,24 49:5  
 routed [1] 53:15  
 routing [5] 46:11 53:21 54:9,13,  
 17  
 rules [1] 1:14

## S

s-e-s-s-i-o-n [1] 50:1  
 saint [1] 48:24  
 sale [1] 10:9  
 sales [3] 43:22,25,25  
 same [4] 9:10 19:11 26:5 30:4  
 saying [4] 47:6 48:4,5,6  
 says [10] 18:11 36:12,13,14,15,  
 19 41:14 43:24 46:19 53:7  
 scott [1] 2:9  
 search [1] 33:19  
 second [3] 19:3 27:10 49:19  
 secretary [1] 40:19  
 section [1] 19:23  
 see [12] 11:24 16:11 19:11 33:3  
 34:3,11 35:22 37:3 38:19 43:11  
 52:2,7  
 seeing [2] 33:10 48:7  
 seen [11] 8:7 13:6,17,22 14:4,8,  
 13,17 25:6 35:16 53:19  
 send [7] 27:6,7 36:13,19,22 37:



<p>19,22  <b>sending</b> [1] 32:22  <b>sense</b> [1] 46:18  <b>sent</b> [5] 11:15 18:20 43:2 51:12, 21  <b>sentence</b> [4] 51:25 52:5, 11, 12  <b>series</b> [2] 16:18 23:7  <b>serve</b> [1] 26:18  <b>served</b> [1] 11:4  <b>service</b> [3] 12:11 16:25 31:23  <b>served</b> [1] 42:12  <b>services</b> [2] 26:8 37:2  <b>set</b> [3] 30:20 32:8 58:14  <b>shared</b> [1] 30:14  <b>ship</b> [2] 8:5, 11  <b>shipment</b> [11] 9:24 20:24 21:23 35:1, 2, 14, 19, 20 37:6 46:6 53:12  <b>shipments</b> [8] 8:22 26:6 28:21 33:9 34:13 44:21 46:4 54:20  <b>shipped</b> [2] 10:10 37:7  <b>shipper</b> [10] 7:23 9:1 15:22 34: 20, 21, 23, 25 35:8 45:13 50:10  <b>shipping</b> [18] 6:23 7:6, 11, 15 9:5, 8, 11, 16 10:4, 9 20:5 22:24 26:16 30:16 40:25 41:16, 18 45:17  <b>show</b> [6] 7:2, 21 13:19 32:18 34: 10 35:14  <b>showed</b> [1] 54:16  <b>showing</b> [1] 31:19  <b>shows</b> [4] 19:1 34:7, 9 53:25  <b>side</b> [3] 13:9, 11 38:22  <b>signature</b> [2] 56:4 57:1  <b>similar</b> [1] 42:1  <b>since</b> [1] 31:3  <b>sir</b> [63] 3:12, 16 4:9, 17 5:20 6:15 7: 4, 8 8:17, 24 10:11, 23 12:7 14:24 16:17, 20 17:5, 8, 24 18:9 19:11 22:22 25:1, 9, 19 28:25 29:11 30: 8 36:11, 24 37:8, 13, 21, 23 38:14 39:11, 13, 15 41:10, 23 42:7, 18 43: 13, 19, 23 45:15 50:7, 14 51:7, 10, 13, 23 52:3, 8 53:20, 23 54:8, 11, 15, 21 55:21, 22 56:1  <b>situation</b> [2] 27:3 51:25  <b>six</b> [1] 5:17  <b>sold</b> [1] 34:8  <b>somehow</b> [2] 45:4, 18  <b>someone</b> [1] 20:12  <b>sometime</b> [1] 52:20  <b>sorry</b> [5] 15:19 21:14 36:8 52:13, 14  <b>south</b> [1] 4:10  <b>southern</b> [13] 12:2, 5, 12, 15 20:5 23:22 24:1 44:20, 25 45:4, 9 48: 25, 25  <b>southpoint</b> [2] 4:7, 10  <b>speaking</b> [2] 47:20 48:11  <b>specific</b> [2] 15:10 33:15  <b>specified</b> [1] 58:11  <b>square</b> [1] 2:4  <b>st</b> [2] 44:11 54:1  <b>starting</b> [1] 55:15  <b>starts</b> [1] 41:3  <b>state</b> [2] 3:7 10:2  <b>statement</b> [4] 7:14, 17 8:9 48:17  <b>states</b> [1] 1:1</p>	<p><b>stating</b> [1] 14:2  <b>stenotypy</b> [1] 58:8  <b>straight</b> [1] 53:17  <b>street</b> [1] 2:5  <b>stroupe</b> [1] 2:9  <b>subject</b> [5] 3:10 7:19 26:6 50:11, 12  <b>subset</b> [1] 31:20  <b>substance</b> [4] 16:18 18:11, 13 20: 4  <b>succinctly</b> [1] 7:18  <b>suing</b> [1] 42:24  <b>suit</b> [7] 5:18, 22 6:13 17:1, 7 46:9, 12  <b>supplement</b> [1] 29:20  <b>supplemental</b> [5] 4:12, 14, 23 5:3 6:5  <b>supplements</b> [1] 29:17  <b>support</b> [1] 19:17  <b>switch</b> [14] 44:14 46:13, 14, 17, 20, 23 47:9, 16, 19, 24 48:7, 9, 21 49:1  <b>switches</b> [1] 48:2  <b>switching</b> [6] 5:7, 9, 11 11:3 44: 16 47:21  <b>sworn</b> [2] 3:3 58:6  <b>system</b> [5] 17:23 18:15 19:1 31: 13 32:3  <b>systems</b> [1] 33:18</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>tag</b> [5] 18:10, 16 19:5, 5, 7  <b>tagged</b> [1] 18:25  <b>talked</b> [1] 53:1  <b>tank</b> [1] 10:17  <b>tariff</b> [15] 5:6 20:7 23:21 26:7, 12 28:23 29:3, 12, 18, 22 30:1, 4, 6, 15 34:14  <b>team</b> [2] 6:5, 7  <b>teresa</b> [3] 1:15 58:4, 19  <b>terminal</b> [21] 16:3 24:19 25:10, 13 31:18, 20 32:22 33:24 35:21 37:10, 11, 15, 18 41:5, 8 46:22 47: 5, 7, 20 48:6 50:13  <b>terminal</b> [3] 46:21 47:19 48:10  <b>terms</b> [1] 9:14  <b>testified</b> [2] 19:2 26:23  <b>testify</b> [2] 39:8 58:6  <b>testimony</b> [6] 3:13 19:15 37:25 45:3 47:10, 11  <b>texas</b> [4] 11:19, 20 40:25 41:16  <b>text</b> [2] 52:10, 18  <b>there's</b> [6] 10:20 19:6 38:24 49:2 51:24 52:5  <b>thereupon</b> [4] 16:8 30:24 49:23 56:7  <b>thinking</b> [1] 33:12  <b>third</b> [2] 41:2, 4  <b>though</b> [1] 34:2  <b>thread</b> [1] 53:4  <b>three</b> [3] 3:21 19:9 38:24  <b>thursday</b> [1] 1:11  <b>title</b> [1] 4:11  <b>today</b> [5] 16:14, 15, 16 29:1 53:20  <b>together</b> [2] 17:16 24:13  <b>took</b> [2] 15:12 28:2  <b>top</b> [6] 17:25 18:16 36:9 48:14 52: 4, 4</p>	<p><b>traffic</b> [1] 44:18  <b>train</b> [3] 32:22 35:7, 8  <b>transaction</b> [1] 15:15  <b>transcribed</b> [1] 3:14  <b>transcription</b> [2] 1:20 58:9  <b>transfer</b> [4] 11:3 15:12 26:24 32: 18  <b>transferred</b> [1] 34:18  <b>transferring</b> [1] 33:7  <b>transfers</b> [2] 21:12 34:10  <b>transflo</b> [5] 41:24, 25 42:5, 8, 9  <b>transmitted</b> [1] 26:21  <b>transport</b> [1] 44:4  <b>transportation</b> [3] 1:4 4:3, 20  <b>transported</b> [1] 14:11  <b>truck</b> [1] 32:21  <b>trucking</b> [10] 13:18 14:3, 5 25:8, 11, 18 27:8 42:5 43:5, 8  <b>true</b> [3] 21:19 22:13 40:12  <b>truth</b> [1] 58:6  <b>try</b> [1] 26:4  <b>trying</b> [11] 17:18 20:10 24:4 27:2, 14 29:9 39:6 45:8, 10, 17 51:16  <b>two</b> [3] 3:21 19:8 31:2  <b>type</b> [4] 11:6 26:20 33:17 42:1  <b>typed</b> [2] 18:24 40:13</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>ultimate</b> [1] 35:12  <b>unabsorbed</b> [1] 5:11  <b>under</b> [11] 3:14, 23 4:13 5:3 7:20 9:12 18:15 20:2 29:20 43:3 53: 25  <b>undercut</b> [2] 20:5 45:8  <b>underneath</b> [1] 36:12  <b>undersigned</b> [1] 1:15  <b>understand</b> [5] 3:13, 18 10:18 21: 14 28:9  <b>understanding</b> [10] 39:25 51:14, 16 52:17, 19, 22 53:13 55:2, 4, 6  <b>understandings</b> [1] 52:9  <b>understood</b> [1] 52:1  <b>underwood</b> [16] 1:10, 13 3:1, 9, 10 4:2 16:6, 8 30:23, 24 50:3, 22, 25 51:5 55:9 57:5  <b>uniform</b> [1] 7:20  <b>union</b> [22] 8:8, 10 11:10, 12, 13, 16, 20 13:1, 3 15:13, 16 21:22 22:1, 8, 19, 23 34:5 44:3, 10 47:18 48:1 54:13  <b>united</b> [1] 1:1  <b>unless</b> [1] 33:15  <b>unload</b> [1] 42:12  <b>unloaded</b> [2] 21:2 49:6  <b>unloading</b> [6] 20:11, 25 27:8 31: 16 34:16 42:15  <b>unloads</b> [1] 42:1  <b>unpaid</b> [2] 5:14, 25  <b>until</b> [4] 3:22 14:11 34:25 35:6  <b>up</b> [13] 5:24 12:3, 24 18:24 32:8 40:19 48:24, 25 49:13, 14 53:7 54: 1, 17  <b>updates</b> [1] 30:5  <b>user</b> [1] 26:10  <b>using</b> [1] 19:24</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/>	<p><b>various</b> [4] 10:21 11:5, 9 29:17  <b>verbiage</b> [2] 38:23 48:13  <b>via</b> [2] 44:3 53:7  <b>viewing</b> [1] 54:7  <b>vs</b> [1] 1:6</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>wait</b> [1] 3:22  <b>waive</b> [4] 38:25 39:18 47:13, 14  <b>way</b> [7] 8:10 26:3 31:7 39:25 44: 17 47:12 55:11  <b>waybill</b> [4] 11:15 15:16, 18, 20  <b>waybills</b> [4] 11:24 54:6, 9, 16  <b>weighing</b> [1] 5:10  <b>western</b> [1] 1:2  <b>whereof</b> [1] 58:14  <b>wherever</b> [1] 10:5  <b>whether</b> [5] 33:13, 22 41:17 42: 16 50:9  <b>who's</b> [1] 27:14  <b>whoever</b> [1] 10:5  <b>whole</b> [4] 15:2 18:3 19:4 58:6  <b>whom</b> [1] 13:16  <b>will</b> [1] 16:6  <b>withhold</b> [1] 50:11  <b>within</b> [5] 5:16 17:23 18:11 23:20 33:8  <b>without</b> [2] 44:18 58:11  <b>witkowski</b> [12] 2:13 14:21 18:4 23:3, 4 30:12 36:7 38:7 41:20 52: 10, 13 53:17  <b>witkowski's</b> [2] 14:19 19:20  <b>witness</b> [2] 3:2 58:14  <b>word</b> [1] 48:9  <b>words</b> [1] 10:3  <b>work</b> [7] 16:21, 22 19:25, 25 20:3 27:2 47:13  <b>working</b> [4] 20:12 21:3 23:18 24: 4  <b>worried</b> [1] 10:13  <b>write</b> [1] 38:10  <b>writing</b> [2] 7:1 55:1  <b>writings</b> [1] 55:4  <b>written</b> [3] 3:15 37:5 38:8  <b>wrote</b> [3] 40:18 52:10, 18</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>yard</b> [2] 13:10, 12  <b>years</b> [5] 19:20, 21 20:2 27:23 28: 3  <b>yesterday</b> [3] 16:6 30:21 53:1  <b>york</b> [1] 4:19</p>
---	--	---	--

**1**

**1:5,9 29:17** [0] 0000238:23  
**48:13**

**V**

**via** [2] 44:3 53:7  
**viewing** [1] 54:7  
**vs** [1] 1:6

**W**

**wait** [1] 3:22  
**waive** [4] 38:25 39:18 47:13,14  
**way** [7] 8:10 26:3 31:7 39:25 44:  
 17 47:12 55:11  
**waybill** [4] 11:15 15:16,18,20  
**waybills** [4] 11:24 54:6,9,16  
**weighing** [1] 5:10  
**western** [1] 1:2  
**whereof** [1] 58:14  
**wherever** [1] 10:5  
**whether** [5] 33:13,22 41:17 42:  
 16 50:9  
**who's** [1] 27:14  
**whoever** [1] 10:5  
**whole** [4] 15:2 18:3 19:4 58:6  
**whom** [1] 13:16  
**will** [1] 16:6  
**withhold** [1] 50:11  
**within** [5] 5:16 17:23 18:11 23:20  
 33:8  
**without** [2] 44:18 58:11  
**witkowski** [12] 2:13 14:21 18:4  
 23:3,4 30:12 36:7 38:7 41:20 52:  
 10,13 53:17  
**witkowski's** [2] 14:19 19:20  
**witness** [2] 3:2 58:14  
**word** [1] 48:9  
**words** [1] 10:3  
**work** [7] 16:21,22 19:25,25 20:3  
 27:2 47:13  
**working** [4] 20:12 21:3 23:18 24:  
 4  
**worried** [1] 10:13  
**write** [1] 38:10  
**writing** [2] 7:1 55:1  
**writings** [1] 55:4  
**written** [3] 3:15 37:5 38:8  
**wrote** [3] 40:18 52:10,18

**Y**

**yard** [2] 13:10,12  
**years** [5] 19:20,21 20:2 27:23 28:  
 3  
**yesterday** [3] 16:6 30:21 53:1  
**york** [1] 4:19

## **EXHIBIT Q**

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 - - -  
4 CSX TRANSPORTATION, INC., )  
5 Plaintiff, )  
6 vs. ) Civil Action  
7 PORT ERIE PLASTICS, INC., ) Case No.  
8 Defendant. ) 05-139 Erie  
9 - - -

10 Deposition of STEVE BARTOSIK

11 Thursday, February 2, 2006  
12 - - -

13 The deposition of STEVE BARTOSIK, called as a  
14 witness by the Plaintiff, pursuant to notice and the  
15 Federal Rules of Civil Procedure pertaining to the  
16 taking of depositions, taken before me, the  
17 undersigned, Teresa Constantini Berardi, a Notary  
18 Public in and for the Commonwealth of Pennsylvania, at  
19 the law offices of MacDonald Illig Jones & Britton,  
20 LLP, 100 State Street, Suite 700, Erie, Pennsylvania  
21 16507-1498, commencing at 1:35 p.m. the day and date  
22 above set forth.  
23 - - -

24 COMPUTER-AIDED TRANSCRIPTION BY  
25 MORSE, GANTVERG & HODGE, INC.  
ERIE, PENNSYLVANIA  
814-833-1799  
- - -

PAGE 2

2

## 1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Janssen & Keenan, P.C.:  
 4 Charles L. Howard, Esquire  
 5 One Commerce Square  
 6 Suite 2050  
 7 2005 Market Street  
 8 Philadelphia, Pennsylvania 19103

9 On behalf of the Defendant:

10 MacDonald Illig Jones & Britton, LLP:  
 11 Richard J. Parks, Esquire  
 12 Scott Stroupe, Esquire  
 13 100 State Street, Suite 700  
 14 Erie, Pennsylvania 16507-1498

15 - - -

## 16 ALSO PRESENT:

17 John T. Johnson  
 18 James Witkowski

19 - - -

20 I-N-D-E-X

## 21 EXAMINATION BY:

22 Mr. Howard

PAGE:

3

54

23 Mr. Parks

32

58

24 - - -

## 25 BARTOSIK DEPOSITION EXHIBIT NOS.:

1 - Handwritten memo to Mr. Howard from  
 Mr. Bartosik with attached documents

PAGE:

16

2 - Fax dated 4-1-02 to CSX from Mr. Bartosik

27

26 - - -

PAGE 3

3

1 STEVE BARTOSIK

2 Called as a witness by the plaintiff, having been  
 3 first duly sworn, as hereinafter certified, was  
 4 deposed and said as follows:

## 5 EXAMINATION

6 BY MR. HOWARD:

7 Q Mr. Bartosik, my name is Chuck Howard. We  
 8 might have met before; is that accurate?

9 A Yes, we have, once.

10 Q Could you just state your name for the  
 11 record and spell your last name for the court  
 12 reporter, please?

13 A My name is Steve Bartosik, B-a-r-t-o-s-i-k.

14 Q Where do you currently reside?

15 A I live at 3708 Guilford, G-u-i-l-f-o-r-d,  
 16 Drive, Erie, PA 16506.

17 Q Are you currently employed?

18 A No, I'm not. I'm retired.

19 Q How long have you been retired?

20 A I retired this summer around about the end  
 21 of July.

22 Q And from whom did you retire?

23 A I had worked for -- technically retired  
 24 from a little company called CH Express. I was only  
 25 there for five weeks.

PAGE 4

4

1 Prior to that, I was employed by  
 2 Presque Isle Trucking for almost 14 years.

3 Q Have you ever been deposed before?

4 A Yes, I have.

5 Q And how many times?

6 A I think twice.

7 Q And were those depositions given in  
 8 connection with a case involving Presque Isle  
 9 Trucking?

10 A Yes, they were.

11 Q Did they have anything to do with  
 12 demurrage?

13 A No, they don't.

14 Q Since you've been through the process  
 15 before, you probably don't need instructions, but I'm  
 16 going to give them to you anyway.

17 As you know, a deposition is a question and  
 18 answer format. I ask the questions, and to the best  
 19 of your ability, you answer them.

20 If I ask a question that you don't

21 understand, I would ask that you tell me that you

22 didn't understand it and ask me to rephrase it so you  
 23 do understand it.

24 If I ask you a question and you answer it,  
 25 then I will assume that you understood it.

PAGE 5

5

1 Is that fair?

2 A That's fine.

3 Q Okay.

4 Now, you've testified that we met for the  
 5 first time, I think it was last night?

6 A Yes, it was.

7 Q Have you had any prior contacts with me?

8 A We had a number of phone calls. I can't  
 9 remember exactly how many.

10 Q And do you recall when the first phone call  
 11 was?

12 A That would have been in September of '05.

13 Q And do you recall what the subject of the  
 14 phone call was?

15 A It was the pending lawsuit between CSX and  
 16 Port Erie Plastics.

17 Q And what, if anything, do you recall did I  
 18 ask of you?

19 A You had asked if I was familiar with  
 20 Port Erie and about the issue that they had with the  
 21 railroad, and I said that I did.

22 Q And do you recall what that issue was?

23 A It was a demurrage bill.

24 Q Do you recall any subsequent phone calls or  
 25 communications?



SHEET 2 PAGE 6

6

1 A We had a couple of phone calls between  
2 September -- I can't exactly remember the dates, and  
3 they were basically about the pending lawsuit, some of  
4 the issues.  
5 Q Did you provide me with documents?  
6 A Yes, I did.  
7 Q And do you recall when that was?  
8 A Probably close to the end of the year  
9 somewhere. Probably in December.  
10 Q And our conversation last night, where did  
11 that take place?  
12 A At the Courtyard by Marriott in Erie.  
13 Q And about how long did it last?  
14 A About a half an hour.  
15 Q What was the subject of our conversation  
16 last night?  
17 A Again, various issues involving this -- the  
18 demurrage bill, and just to get an idea of some of the  
19 questioning, I guess.  
20 Q Prior to our initial phone call in  
21 September, had you spoken with anyone concerning the  
22 demurrage bills at issue in this lawsuit?  
23 A Yes, I did.  
24 I spoke with the attorney for the defense  
25 as well as --

PAGE 8

8

1 If you recall.  
2 A Identical to our conversations, and just  
3 giving him background on what I had -- my experience  
4 with Port Erie Plastics.  
5 Q And how long did that conversation last?  
6 If you recall.  
7 A 45 minutes perhaps.  
8 Q What was the business of Presque Isle  
9 Trucking?  
10 A Presque Isle Trucking was a common and  
11 contract carrier licensed by the, at the time,  
12 Interstate Commerce Commission.  
13 Q Did Presque Isle Trucking have a business  
14 relationship with Port Erie Plastics?  
15 A Yes, we did.  
16 Q Was that under Presque Isle's contract  
17 authority or common carrier authority?  
18 A Common.  
19 Q What is the difference between those two?  
20 A Our common carrier authority, we published  
21 the tariffs that was basically open to the public to  
22 use, as compared to a contract carriage, which is  
23 specifically that, you have a written contract and  
24 agreement between the two parties involved.  
25 Q Did Port Erie ever ask for contract rates

PAGE 7

7

1 Q Before you spoke with me?  
2 A No, after.  
3 Q Before you spoke with me for the first time  
4 in September --  
5 A Oh, no. I'm sorry. No.  
6 Q Since then, have you spoken with anyone  
7 other than myself about the issues in this lawsuit?  
8 A Yes. That would have been the attorney for  
9 the defense.  
10 Q Is that Mr. Parks?  
11 MR. PARKS: Yes. Me.  
12 A Yes.  
13 Q I assume that was a phone call since you  
14 didn't recognize him.  
15 A Yes, it was a phone call.  
16 Q And do you recall when that conversation  
17 took place?  
18 A Probably about the time that we -- that I  
19 had forwarded you the documents, because I also  
20 forwarded a copy of the same documents to Mr. Parks.  
21 Q Is it your testimony that anything you sent  
22 to me you've also provided to Mr. Parks?  
23 A Yes, I have.  
24 Q What was the subject matter of your  
25 conversation with Mr. Parks?

PAGE 9

9

1 versus the published tariff rates?  
2 A No.  
3 Q What was your title at Presque Isle  
4 Trucking?  
5 A I was the general manager.  
6 Q And how long had you held that position?  
7 A From the company's inception till the time  
8 I left, almost 14 years.  
9 Q The company's inception would be 1991?  
10 A Yes.  
11 Q What were your job responsibilities as the  
12 manager, general manager?  
13 A Overall responsibility for entire  
14 operation, the hiring employees, obtaining business,  
15 the maintenance of operation, the buying of equipment,  
16 just about everything there is to do to run the  
17 company as well as the receivables and all that  
18 stuff.  
19 Q And how many employees did you have under  
20 you?  
21 A At that time -- we downsized the company a  
22 couple years ago.  
23 At that point was our high point, we had  
24 65.  
25 When I left, we had six.

PAGE 10

10

- 1 Q During the time period 2002-2003, how many  
 2 employees did Presque Isle have?  
 3 A About approximately 65.  
 4 Q And to whom did you report?  
 5 A I reported to the CFO at the Plastek Group.  
 6 Q Did you say "plastic" or "Plastek"?  
 7 A "Plastek."  
 8 Q And what is the Plastek Group?  
 9 A Plastek Group is a group of companies that  
 10 are joined under that title. They are -- it's a  
 11 privately held corporation, as is Presque Isle  
 12 Trucking.  
 13 Q Is Presque Isle -- or, during the 2002-2003  
 14 time frame, was Presque Isle Trucking a member of the  
 15 Plastek Group?  
 16 A Yes.  
 17 Q Solely as a carrier?  
 18 A Well, Presque Isle Trucking is a -- is a  
 19 separate corporation. It has its own EIN number.  
 20 We had -- we had joint ownership. The man  
 21 that owned Plastek Industries and the Plastek Group  
 22 also owned Presque Isle Trucking.  
 23 We aligned ourselves with the Plastek Group  
 24 for insurance purposes, purchasing of insurance and  
 25 financing, legal things, when we needed them.

PAGE 11

11

- 1 Q What other types of companies were under  
 2 the Plastek Group umbrella?  
 3 A A number of tool and die operations as well  
 4 as plastic -- a number of plastic molding operations  
 5 as well.  
 6 Q Describe for us the services that  
 7 Presque Isle Trucking provided to Port Erie Plastic.  
 8 A We provided rail -- rail space for  
 9 Port Erie Plastics to spot railcars on our lease  
 10 tracks, and then we would transport the bulk resin  
 11 from those railcars to their plant in Erie.  
 12 Q Where was the rail space that you just  
 13 talked about?  
 14 A At the Mount Fort Terminal.  
 15 That's M-o-u-n-t, second word F-o-r-t.  
 16 Q Two words?  
 17 A Two words.  
 18 Q And you referenced a lease track.  
 19 What is a lease track?  
 20 A We paid the Mount Fort operation a lease  
 21 fee on every car that we placed on that track, and we  
 22 leased rail spaces from them.  
 23 Q Was it a single track?  
 24 A No, there were multiple tracks there.  
 25 Q How many tracks did Presque Isle lease from

PAGE 12

12

- 1 Mount Fort?  
 2 A As many spaces as we needed.  
 3 Q So was the lease arrangement a per railcar  
 4 arrangement?  
 5 A Yes.  
 6 Q Was there a maximum number of spaces that  
 7 you could lease at any one time?  
 8 A Not really.  
 9 There was no specific number ever listed in  
 10 our agreement, but they also had rail operations in  
 11 and out of their facility, and our agreement was not  
 12 to -- not to hurt their operations by overloading them  
 13 with our cars.  
 14 Q At any given time, how many -- by "our  
 15 cars," what do you mean by "our cars"?  
 16 A Well, the cars that would have been under,  
 17 you know, either the Plastek Group cars or Port Erie  
 18 Plastic cars.  
 19 Q So a car that had resin, the ultimate  
 20 destination of Port Erie, you would consider that your  
 21 car for purposes of this conversation?  
 22 A Yes.  
 23 Q And the same with Plastek Group cars?  
 24 A Yes.  
 25 We normally -- Port Erie Plastics was a

PAGE 13

13

- 1 customer of ours. We tried to do justice by them, so  
 2 we would -- if -- depending on the activity at the  
 3 Plastek Group, we would -- we may put an extra car or  
 4 two in there to get them off of the storage tracks,  
 5 but typically there would be eight Port Erie cars on  
 6 our track.  
 7 Q You said "typically."  
 8 I understood from your earlier testimony  
 9 that it sounded like there was no limit to the number  
 10 of cars that you could have leased at any given time.  
 11 A Well, there is -- I mean, there are some  
 12 limitations down there, but they also had railcars  
 13 coming in, "they" meaning Mount Fort, which would  
 14 curtail us putting too many cars in there, because  
 15 there was -- operationally speaking, there were  
 16 switches there and things that -- and driveways that  
 17 had to be kept open.  
 18 So, you know, they never really -- well,  
 19 this goes back a ways, but "never" is a long word, but  
 20 we couldn't shut down their operation by clogging them  
 21 with Plastek cars.  
 22 Q I think you said occasionally you would ask  
 23 if you could put some extra cars in the space.  
 24 By "extra," do you mean over and above the  
 25 eight that typically --

SHEET 3 PAGE 14

14

1 A Yes.  
2 Q So perhaps at some times you might put ten  
3 or 12, but --  
4 A Yes, yes, that's true.  
5 Again, depending on the activity of -- I  
6 mean, that's -- there were any number of cars that  
7 were on storage tracks, and as I say -- I mean, we  
8 tried to limit the amount of storage charges that were  
9 being assigned those cars, but typically, as I say, we  
10 would have about eight cars in there.  
11 Q How did the railcars, if you know, get to  
12 Mount Fort?  
13 A The cars would come in -- based on whenever  
14 we would empty a car, we would order another one in  
15 from the storage track to replace it.  
16 Q All right.  
17 When you say whenever you emptied a car,  
18 where would this emptying process take place?  
19 A The emptying took place at Mount Fort.  
20 Q The contents of the car would be  
21 transported from the railcar to a Presque Isle truck?  
22 A Yes, and then would be taken to Port Erie  
23 Plastics.  
24 Q And there you would unload the product into  
25 the Port Erie silo?

PAGE 15

15

1 A That's correct.  
2 Q Do you know where the railcar was before it  
3 arrived at Mount Fort?  
4 A Most of them were on a storage track.  
5 Q Where is that storage track?  
6 A They had -- CSX had various locations.  
7 One of them was right down here on the  
8 Bay Front Highway.  
9 Some of them were at their yards on  
10 Ash Street, and some of them would have been out in --  
11 at their marshalling yards out on Downing Avenue.  
12 Q And who brought the cars from the CSX  
13 storage track to Mount Fort?  
14 A A CSX local switch crew would bring them  
15 in.  
16 Q How often would that occur?  
17 A Depending on the particular day, a couple  
18 times a week.  
19 Q And what triggered the movement of a  
20 railcar from the CSX storage yard to the Mount Fort  
21 Terminal?  
22 A Every time we would make an empty, they  
23 would swap one out.  
24 Q How would CSX know that you had emptied a  
25 car?

PAGE 16

16

1 A We had -- we would fax them with a -- we  
2 had a form, an empty fax -- empty car fax that we  
3 would send to the railroad with the car numbers and  
4 the date that they were emptied.  
5 MR. HOWARD: Let's mark this as Bartosik 1.  
6 (Thereupon, Bartosik Deposition Exhibit  
7 No. 1 was marked for identification.)  
8 BY MR. HOWARD:  
9 Q The court reporter has handed you an  
10 exhibit that we have marked as Bartosik 1. It is a  
11 seven-page exhibit.  
12 Do you recognize Exhibit 1?  
13 A Yes, I do.  
14 Q What is the first page?  
15 A The first page?  
16 Q Well, the real first page, that page  
17 (indicating), yes.  
18 A That's just a cover letter that I hand  
19 wrote explaining roughly what these documents were  
20 when I faxed them to you.  
21 Q And this is your fax cover sheet to me?  
22 A Yes, it is.  
23 Q Okay. Let's turn to the third page. Right  
24 there (indicating).  
25 At the top, there's a fax line that

PAGE 17

17

1 indicates this is page 3 of 3, and it says "CSX  
2 Transportation Constructive Placement Notice."  
3 What is a constructive placement notice?  
4 A This is the railroad's notification to the  
5 customer that a car has arrived at destination and is  
6 awaiting their instructions as far as what to do with  
7 it.  
8 Q Is this an example of a constructive  
9 placement notice that Presque Isle Trucking would have  
10 received from CSX?  
11 A Yes, it is.  
12 Q Now, this is dated September of 2003.  
13 Do you see that in the lower left-hand  
14 corner?  
15 A Yes, uh-huh.  
16 Q And how many cars are identified on this  
17 constructive placement notice?  
18 A There's one.  
19 Q Would a constructive placement notice have  
20 been sent by CSX for every car that arrived?  
21 A Yes.  
22 Q Did Presque Isle Trucking receive  
23 constructive placement notices like this for the cars  
24 that were shipped to Port Erie?  
25 A Yes, we did.

PAGE 18

18

1 Q What does this constructive placement  
2 notice tell you when you get it?  
3 A Well, first, it gives a waybill number, the  
4 shipper, origin, freight terms, gross weight -- or,  
5 net weight, I'm sorry, origin. Did you get origin?  
6 Okay.  
7 Q When you receive this constructive  
8 placement notice, what is your understanding of where  
9 that car is at that moment?  
10 A The car is in Erie, Pennsylvania.  
11 Q Is it at Mount Fort?  
12 A No, it isn't.  
13 Q It's at the CSX storage area?  
14 A Yes, it is.  
15 Q When you receive this information, what  
16 action, if any, would you take?  
17 A We wouldn't take any at this point.  
18 Q What would you do with this information?  
19 A Actually, nothing. They weren't our cars.  
20 We got -- we got this notice as a courtesy  
21 just so we knew what was coming. That was all.  
22 Q Do you know whether this notice was sent to  
23 any other party?  
24 A I'm not sure.  
25 It's addressed to Port Erie Plastics. I'm

PAGE 19

19

1 not sure. I think they got one, but I can't swear to  
2 that.  
3 Q Look at the page prior to that one.  
4 What is that document?  
5 A That is a railcar inventory that I  
6 generated every Friday and sent to Jim Witkowski at  
7 Port Erie Plastics.  
8 Q Did you send it to anyone else?  
9 A No.  
10 Q The cars that are identified on here --  
11 let's look at the first one.  
12 AMCX 104557 indicates that the date that  
13 car was placed was July 26th.  
14 What does that mean, "Date Placed"?  
15 A That's the day that that railcar left the  
16 storage track and was placed on our private track for  
17 unloading.  
18 Q How did CSX know to move it from the  
19 storage track to your lease track?  
20 A Typically, you know, I would -- I would  
21 call one of the train masters at the CSX yard here and  
22 give them a car number.  
23 At times, we would put them on -- we would  
24 mark that information on the bottom of our -- we  
25 would hand write it on the bottom of our empty car

PAGE 20

20

1 release.  
2 We did it a number of different ways.  
3 Q How would you know what car number to ask  
4 for?  
5 A This inventory that we have here is  
6 really -- is much later.  
7 During the time that this all happened,  
8 this inventory would have been much longer, and it  
9 would have shown -- in the area where "Date Placed" is  
10 marked, it would have shown the information from the  
11 constructive placement notice, and it would have said  
12 "Constructively Placed" and the date that this  
13 constructive placement notice was sent.  
14 Q All right. Let me make sure --  
15 A And at that point, I would take the oldest  
16 car of the -- of -- there are two products involved  
17 here, 8949 and 8931, and I would take the oldest car  
18 of that product and replace it, you know, replace the  
19 empty.  
20 Q Now, is it your testimony that this  
21 inventory form that we're looking at was different in  
22 the 2002-2003 time period?  
23 A Yes.  
24 Q In what --  
25 A I mean, the form, itself, was identical,

PAGE 21

21

1 except that there would be much more -- much -- you  
2 know, many more cars on here, and the constructive  
3 placement dates would be shown on that inventory.  
4 So when it was transmitted to Port Erie  
5 Plastics, it was a complete inventory of the cars that  
6 were on the private siding as well as those that were  
7 on the storage track.  
8 Q How did you know what information was --  
9 was it the constructive placement notice that told you  
10 what was available on the CSX storage track?  
11 A That -- that notice gave me the car number.  
12 I also received by fax from the shipper a  
13 bill of lading, the railroad bill of lading, with the  
14 car number and the product codes on it, so that when  
15 that car arrived, I would have both documents and I  
16 would know what product it was.  
17 Q And it was a constructive placement notice  
18 that told you that the car had arrived?  
19 A Yes.  
20 Q When you receive the constructive placement  
21 notice, say, on a -- strike that.  
22 This railcar inventory was prepared and  
23 sent to Port Erie every Friday; is that correct?  
24 A That's correct, before noon every Friday.  
25 Q So if a constructive placement notice had



SHEET 4 PAGE 22

22

1 arrived before that, during that week on a Monday or a  
2 Tuesday or a Wednesday, then that car identified on  
3 the CP notice would have been put on that Friday's  
4 railcar inventory?

5 A That's correct.

6 Q And in a column that doesn't appear on this  
7 form but it would have appeared on prior forms, the  
8 date that the car was constructively placed would show  
9 up; is that correct?

10 A That's correct.

11 I might add that on this CP notice, one of  
12 the lines of information is the date that that car  
13 would have been constructively placed.

14 Q Do you know what "constructively placed"  
15 means?

16 A In the terms that we're dealing with here,  
17 yes, I do.

18 It's in lieu -- in lieu of being physically  
19 placed on a siding either owned by the railroad or by  
20 the customer, that car has been placed -- or, for  
21 delivery.

22 Q What did you do to find this particular  
23 document?

24 A To find it?

25 Q Yes, to find it.

PAGE 23

23

1 When you faxed these to me in November,  
2 this past November, do you maintain documents like  
3 this at your home?

4 A Oh, no, no. I understand. No, I had to  
5 prevail on my -- my past employer to go through some  
6 of the files to get examples of what we sent to the  
7 customer.

8 Q When you did that search, did you  
9 understand that the demurrage charges at issue were  
10 from the 2002-2003 time period?

11 A Yes.

12 Q Did you look for examples of railcar  
13 inventories from that time period?

14 A Yes, I did.

15 Q What did you find?

16 A I couldn't find them.

17 Q Why do you think they weren't there?

18 A Typically, I would keep things as long as I  
19 thought they were relevant, and after a year or two, I  
20 would -- if I had not any issues as far as freight  
21 charges or such -- I mean, there are limitations as  
22 far as freight bills, you know.

23 I mean, claims are a couple years, I mean,  
24 that kind of stuff, and if we had not had -- if I had  
25 not had any issue with it, then we would just dispose

PAGE 24

24

1 of them.

2 Q Would Presque Isle have had a business  
3 reason to have maintained old copies of those  
4 inventory sheets?

5 A No.

6 Q Let's look at the email.

7 It's on the third page from the end. It's  
8 an email from Steve Bartosik to Sharon Jones.  
9 Do you see that?

10 A Yes.

11 Q And who is Sharon Jones?

12 A Sharon Jones -- again, this is the '04 time  
13 period.

14 Sharon Jones was a customer service rep for  
15 BP Amoco, who was the shipper of most of this resin.

16 Q Was Sharon Jones your contact person during  
17 the 2002-2003 time period?

18 A No.

19 Q Do you recall who that contact person was?

20 A Had none.

21 This -- this process just came into play  
22 much later in the -- in the movement because of some  
23 financial problems that had arisen.

24 Q And what process are you referring to?

25 A Well, when -- in the '04 time frame, we

PAGE 25

25

1 needed to go to the shipper to get cars released from  
2 the storage yard to be moved in for unloading, and the  
3 shipper had to actually release them because they  
4 still owned them at that point.

5 Q What about during the 2002-2003 time  
6 period?

7 A There were not restrictions like that.

8 Q So during that time period, is it your  
9 testimony that there would not have been this type of  
10 communication between you and the BP?

11 A That's correct.

12 Q So BP didn't have to be notified that cars  
13 had been emptied and released?

14 A That's correct.

15 Q And do you recall when this particular  
16 procedure went into place?

17 A A date?

18 No, I don't remember a date.

19 I can tell you the circumstances around it,  
20 if you want to know that, but --

21 Q Do you recall whether this communication  
22 concerning release cars with BP was something you were  
23 doing in 2003?

24 A I don't believe it was.

25 Q Or prior to 2003.



PAGE 26

26

1 A No.  
 2 Q Look at the next page.  
 3 This is an email from Mr. Witkowski to you  
 4 and some other people, one of whom is Mel Field.  
 5 Who is Mel Field?  
 6 A He was one of the receiving people at  
 7 Port Erie.  
 8 Q Did you have occasion to have contact with  
 9 him during the time period?  
 10 A Not on a regular basis.  
 11 I may have talked to him once or twice, but  
 12 typically he would be in contact with my drivers.  
 13 Q And what would be the nature of his contact  
 14 with your drivers?  
 15 A They -- they would speak usually by cell  
 16 phone every day as to their delivery requirements that  
 17 particular day.  
 18 Mel or else one of his counterparts would  
 19 pass along to my people how many loads of resin, and  
 20 then what -- which -- which product code they wanted,  
 21 and how much of it, and where to put it.  
 22 Q Were you kept in that particular  
 23 information loop?  
 24 A No, I wasn't.  
 25 Q How about Dave Nickle, who is Dave Nickle?

PAGE 27

27

1 A Dave is one of the receiving guys as well.  
 2 Q Was his job similar to what Mel Field was  
 3 doing?  
 4 A I believe it was, yeah.  
 5 Q Is it your understanding that Mr. Nickle  
 6 would have had daily communications with your drivers?  
 7 A Yes.  
 8 Q For the same purposes that you just  
 9 described?  
 10 A Yes.  
 11 Q Do you know who initiated those calls?  
 12 A They did, Port Erie did.  
 13 MR. HOWARD: Let's mark this as Bartosik 2.  
 14 (Thereupon, Bartosik Deposition Exhibit  
 15 No. 2 was marked for identification.)  
 16 BY MR. HOWARD:  
 17 Q The court reporter has marked a single page  
 18 document as Exhibit 2.  
 19 Do you recognize this document?  
 20 A Yes, I do.  
 21 Q And what is this document?  
 22 A That's the -- my empty car release that we  
 23 would send to the railroad.  
 24 Q And what are you reporting to CSX when you  
 25 send this form to them?

PAGE 28

28

1 A I'm reporting empty cars.  
 2 There are two locations on this particular  
 3 form. If you will notice, Myrtle Street and the  
 4 date, that was a Plastek sighting, and Mount Fort  
 5 Terminal is also listed on here.  
 6 Q And the two cars that are listed under  
 7 "Myrtle Street," were those Port Erie cars?  
 8 A No, they weren't.  
 9 Those were Plastek cars.  
 10 Q If you had sent CSX notice -- an empty car  
 11 release notice to Port Erie, where on this form would  
 12 their cars have been reported?  
 13 A They would have been at the Mount Fort  
 14 Terminal, so it would have been listed under that.  
 15 Q Let me represent to you that CSX produced a  
 16 substantial quantity of these forms, copies of these  
 17 forms to Port Erie, and for each one of those, it has  
 18 a car under the "Mount Fort Terminal" column.  
 19 Would it be your testimony that those were  
 20 Port Erie cars that were being released?  
 21 A Not all of them, because Plastek did have  
 22 railcars there as well, so -- but all of the Port Erie  
 23 cars were kept at that location, so --  
 24 Q So there would not be a Port Erie car under  
 25 Myrtle Street?

PAGE 29

29

1 A No, maybe once but, no. 99 percent of the  
 2 time, they're all at Mount Fort.  
 3 Q I believe earlier you testified that on  
 4 occasion when you would fax that empty car release to  
 5 CSX, you would also provide them with instructions to  
 6 bring over a full car?  
 7 A That's true.  
 8 In the body of this form, I would just hand  
 9 write a note to the -- to the local yard here.  
 10 The local yard also got a copy of this.  
 11 Faxed it to both places.  
 12 The customer service number was in  
 13 Pittsburgh, I believe.  
 14 And I also would send it to the local guy,  
 15 kind of expedite the movement of the cars out, is  
 16 all.  
 17 And in the bottom of the note here, I would  
 18 just hand write which car to bring in next.  
 19 Q And how would you know to give that  
 20 instruction?  
 21 A Well, when we emptied one, we had to  
 22 replace it with a -- typically, a like product from  
 23 that outside inventory.  
 24 Q Would it be fair to say whenever you  
 25 emptied a car at Mount Fort, that was done through the

SHEET 5 PAGE 30

30

1 instructions that you were receiving -- your drivers  
2 were receiving from Port Erie?

3 A That's correct.

4 Q During the time period where Presque Isle  
5 had a business relationship with Port Erie, did you  
6 have occasion to have any communications with an  
7 entity known as Nexpak?

8 A Not during this time frame.

9 Q How about any time frame?

10 A Later, yes. Not a lot, a couple of times.

11 After -- I can't -- I don't know what dates  
12 they were, and not very much.

13 Every once in a while, we'd get a phone  
14 call about something, and as time went on and this  
15 movement started to go away, we would get a phone call  
16 occasionally to divert a car that was up here, but  
17 other than that, very seldom.

18 Q Do you recall conversations concerning the  
19 diversion of a car during the 2002-2003 time period?

20 A No.

21 The move was in full swing here at that  
22 point, and there was -- we never diverted anything at  
23 that point.

24 Q During the relevant time point -- by that,  
25 I mean the 2002-2003 time period -- did you have

PAGE 32

32

1 and so it was not my job to carry it much further than  
2 that.

3 Q Were you attempting to give him advice?

4 A We -- it wasn't my job. They weren't  
5 paying me to give them advice.

6 I mean, we discussed the issue of having  
7 all those cars on hand, and made attempts to find some  
8 other areas to get them to put those cars, to get them  
9 off of demurrage.

10 We made one -- he and I did make one joint  
11 meeting with the people from the East Erie Commercial  
12 Railroad in an attempt to -- which is at the GE  
13 facility here -- in order to see if there was a way  
14 that we could -- we -- he could rent the space there  
15 as compared to having a storage track.

16 MR. HOWARD: That's all I have.

17 EXAMINATION

18 BY MR. PARKS:

19 Q Mr. Bartosik, as you know --

20 A Before we start, could I find out who else  
21 is here?

22 MR. PARKS: Sure.

23 MR. WITKOWSKI: Jim Witkowski.

24 THE WITNESS: I didn't recognize you.

25 MR. WITKOWSKI: I know.

PAGE 31

31

1 occasion to have any communications with the  
2 shippers?

3 And by "shipper," I mean BP Amoco.

4 A No.

5 Q Did you ever discuss the accrual of  
6 demurrage charges with anyone at Port Erie Plastics?

7 A Yes.

8 Q And with whom did you discuss that?

9 A Jim Witkowski.

10 Q And do you recall when the first time was  
11 that you might have had that conversation?

12 A No.

13 It was so long ago, and it was telephone,  
14 you know. We talked about it a number of times. I  
15 mean, it was casual conversation, such as -- you know,  
16 as to the number of cars that were here, and the fact  
17 that they were accruing demurrage. That was kind of  
18 it.

19 They weren't my cars, so it wasn't an issue  
20 that I had to spend a lot of time on.

21 Q Was the conversation of the type where you  
22 were providing information to Mr. Witkowski?

23 A Not -- not really.

24 I mean, he had the inventory and he knew  
25 how many cars were here, and the issues that were --

PAGE 33

33

1 MR. JOHNSON: John Johnson.

2 THE WITNESS: John, nice to meet you.

3 And you are?

4 MR. STROUPE: Scott Stroupe.

5 MR. PARKS: He's an associate.

6 BY MR. PARKS:

7 Q Mr. Bartosik, as you're now aware, my name  
8 is Rich Parks. I am representing Port Erie Plastics  
9 in this.

10 I have some questions about your testimony.

11 First of all, if I'm correct, with regard  
12 to your conversation on Deposition Exhibit No. 2,  
13 which is this particular document that I'm showing you  
14 (indicating), that is irrelevant to Port Erie  
15 Plastics; correct?

16 Didn't you say that the testimony was,  
17 these are Plastek cars?

18 A One form was used for all the cars.

19 Q So you didn't distinguish a Port Erie,  
20 Plastek car. It was a car, you needed it out of one  
21 of these facilities, and you would list them, and you  
22 would tell -- ship that over to CSX and down to  
23 Pittsburgh and say, "Get it out of here," and  
24 sometimes you said you might put a note on here to  
25 move another car in; correct?

PAGE 34

34

1 A That's correct.  
 2 Q And did that also apply with Plastek, those  
 3 notes at the bottom, bring another car in?  
 4 A Yes.  
 5 Q And with regard to this, who had the most  
 6 volume running in and out of Mount Fort Terminal,  
 7 Plastek or Port Erie?  
 8 A From memory, it would be difficult.  
 9 I would -- to tell you -- to answer that, I  
 10 would say that Plastek had more cars at Mount Fort  
 11 than Port Erie did.  
 12 Q That's all I want.  
 13 And, of course, Plastek was really the  
 14 parent company or the common ownership company for  
 15 Presque Isle Trucking; correct?  
 16 A Correct.  
 17 Q Why was Presque Isle Trucking established?  
 18 A As a common carrier, we -- to provide resin  
 19 service, and as time went along, we would service  
 20 Plastek customers to give them some reliability of  
 21 service.  
 22 Q Now, did you do anything other than bulk  
 23 trucking?  
 24 A Oh, yes.  
 25 Q What other kind of trucking did you do?

PAGE 35

35

1 A Well, as a common carrier, we are licensed  
 2 to handle general commodities.  
 3 Q Did you also ship for Plastek its final  
 4 product in boxed trucks?  
 5 A Yes, we did.  
 6 Q And why would a company want to own a  
 7 common carrier associated with its business?  
 8 A Perhaps you might ask Mr. Prischak that  
 9 question.  
 10 Q Do you understand that there's a tax  
 11 benefit for that?  
 12 A I wasn't involved with that.  
 13 Q And you were hired after it was  
 14 established?  
 15 A I was hired when it was established.  
 16 Q And that was what year?  
 17 A 1991.  
 18 Q And when did you start doing anything for  
 19 Port Erie?  
 20 A Oh, it was many years after that.  
 21 Q So did you haul resin for anyone other than  
 22 Plastek before the Port Erie association?  
 23 A I don't remember.  
 24 Q Do you recall off the cuff?  
 25 A We had had -- we had done business with

PAGE 36

36

1 Port Erie prior to this particular movement at least  
 2 once.  
 3 Q With bulk rail?  
 4 A Yes, uh-huh.  
 5 Q Now, you said you were familiar with  
 6 Nexpak.  
 7 What made you familiar with Nexpak? Why  
 8 would they be calling you?  
 9 You said on certain occasions they would  
 10 call you.  
 11 What did they inquire of you?  
 12 A Again, during the period of time that -- in  
 13 question here, I had no conversation with Nexpak.  
 14 It was only after -- the initial company,  
 15 Nexpak, in this period of time in question here, went  
 16 bankrupt.  
 17 And after that, the controls on releasing  
 18 the resin became much more stringent, as I understand  
 19 it, because I'm getting all of -- this information was  
 20 second hand, it was passed onto me from Port Erie,  
 21 the -- at that point, I know that the credit issues  
 22 became tighter, and the releases of the cars -- we got  
 23 more people involved in the process.  
 24 Q Now, you said that BP would send you bills  
 25 of lading --

PAGE 37

37

1 A That's right.  
 2 Q -- when a railcar would be dropped into the  
 3 Mount Fort Terminal by CSX?  
 4 A No. When it was shipped.  
 5 Q So you got a notice of shipment.  
 6 Did you forward the notice of shipment to  
 7 Port Erie?  
 8 A No.  
 9 Q Did you forward any of these constructive  
 10 placement notices to Port Erie?  
 11 This particular document (indicating), did  
 12 you fax this over?  
 13 A Did I? No.  
 14 Q So you did send them, you said, a car  
 15 inventory, but you don't have any car inventories that  
 16 are relevant to the time in question?  
 17 A No.  
 18 Q That was only after.  
 19 So you don't have any ones to show us what  
 20 exactly you disclosed to Port Erie as far as a railcar  
 21 inventory and what notice you gave them as far as  
 22 constructive placements or anything else; correct?  
 23 A Right.  
 24 Q And when you got the -- did you get a bill  
 25 of lading as the notice of shipping?

SHEET 6 PAGE 38

38

1 A I had a copy of the railroad -- the  
 2 railroad waybill -- or, no, I'm thinking -- I take  
 3 that back.  
 4 No, I got a copy of the bill of lading from  
 5 BP to the railroad.  
 6 Q Now, I'm going to show you a document that  
 7 was listed as Witkowski Exhibit No. 5 and ask you: Is  
 8 this the bill of lading that you were referring to, or  
 9 one similar to that?  
 10 A Yes.  
 11 Q And in your conversations with BP, who did  
 12 you understand BP was selling and shipping for,  
 13 selling the resin to and shipping for?  
 14 A Again, my only conversations with BP would  
 15 have been much later.  
 16 Q But when you had those conversations, why  
 17 were they tightening up the credit?  
 18 A Well, the company was Nexpak.  
 19 Q So you knew that BP was selling to Nexpak?  
 20 A Yes, I did.  
 21 Q Do you know if that was also the case at  
 22 the time relevant to these demurrage charges?  
 23 A Yes.  
 24 Q You got these bills of lading, and it said  
 25 "Sold to Nexpak," and you were aware of the existence

PAGE 39

39

1 of Nexpak; weren't you?  
 2 A Yes.  
 3 Q And those bills were coming in prepaid;  
 4 correct?  
 5 A Yes.  
 6 Q And then you received payment directly from  
 7 Port Erie?  
 8 A Yes.  
 9 Q And did you inquire to Port Erie who owned  
 10 the plastic?  
 11 A No.  
 12 Q Do you know when Port Erie, if at all, ever  
 13 owned the plastic that was there?  
 14 A No.  
 15 Q Do you know if Port Erie is doing business  
 16 with Nexpak?  
 17 A Today?  
 18 Q No.  
 19 Did you know at that time?  
 20 A Oh, did I? Yes.  
 21 Q Did you understand that the railcar  
 22 shipment of resin was a special deal with Nexpak to  
 23 supply that particular contract?  
 24 A No.  
 25 Q They didn't mention that to you, why all of

PAGE 40

40

1 a sudden are you getting railcars?  
 2 A As I say, we had done business in the past,  
 3 and they called and said they had another customer.  
 4 Q So they did say it was for a customer?  
 5 A Yes.  
 6 Q Okay.  
 7 A And I know in conversations that there were  
 8 movements of presses and molds moving into their plant  
 9 that were supporting this movement, and I know we had  
 10 discussed -- we discussed, we talked about the fact  
 11 that there was -- that Nexpak was involved in the  
 12 purchase of this resin, and that was the end of our  
 13 conversation.  
 14 Q Did you help move presses into --  
 15 A No.  
 16 Q You don't do lowboy type of hauling?  
 17 A No.  
 18 Q Now, what did they tell you about the  
 19 movement of presses in? Did they tell you who owned  
 20 those presses?  
 21 A I knew that the molds were owned by Nexpak,  
 22 some of them, not all of them but, again, it was -- I  
 23 mean, that happens in the injection molding business.  
 24 Q But you also said you knew that they were  
 25 already running machinery in there, or moving

PAGE 41

41

1 machinery in there.  
 2 A I had heard that from my employees that  
 3 were out there. They would be delivering cargo, and  
 4 they would see them bringing presses in.  
 5 My main concern was the -- it's a good  
 6 thing when those kinds of things are happening, and  
 7 I'm concerned about making certain we have manpower  
 8 and the availability to service our customers at that  
 9 time.  
 10 Q Did your people ever call in the morning  
 11 and say, "How many truckloads of resin do you need,"  
 12 to Port Erie?  
 13 A They may have.  
 14 Q But you weren't in control of that?  
 15 A No.  
 16 Q But that was kind of your truck drivers,  
 17 they would come in and they would be looking for a  
 18 load?  
 19 A That's right.  
 20 In order to schedule -- again, so that -- I  
 21 mean, we were there every day.  
 22 If we didn't get a phone call, we would  
 23 call them to find out if they wanted anything.  
 24 Q Did they ever have to check with anybody  
 25 before they got back to you about how many loads they



PAGE 42

42

1 were going to need?

2 A I have no idea.

3 Q Don't recall?

4 Now, in 2004 -- are you aware of when

5 Nexpak filed bankruptcy?

6 A No.

7 Q If I were to tell you in July, in the

8 middle of the summer, does that make a recollection to  
9 you?

10 A I'm not certain. I think they did it

11 twice. They filed twice, or just once?

12 Q And at that point, you knew that there was  
13 a lot of concern about not over delivering resin?

14 A Yes.

15 Q During the wind down?

16 A Yes.

17 Q And, in fact, all of these in your  
18 Deposition Exhibit No. 1 refer to post bankruptcy,  
19 post contact with BP --

20 A Yes.

21 Q -- to release cars; correct?

22 A Yes.

23 Q And did BP ever tell you not to deliver a  
24 car at any time that you can recall?

25 Like, right around the filing of

PAGE 43

43

1 bankruptcy, weren't there cars held?

2 A Yes.

3 Q How did they contact you and what -- I  
4 mean, who was exercising control over that car?

5 A Boy, this goes back a long ways.

6 Right at that point of bankruptcy, I think  
7 there were a couple of loads in question that were in  
8 an existing car that had already been opened, and  
9 those went to -- those went to Port Erie and were  
10 delivered.

11 And the bankruptcy, as I recall, was filed  
12 on the Saturday, and we typically didn't work on  
13 Saturdays. So these loads went in there.

14 We didn't do anything illegal.

15 The loads were delivered prior to the  
16 bankruptcy being filed.

17 Q I'm not accusing you of anything illegal.

18 I'm asking, do you recall BP making the hold?

19 A And that would have been the only time, and  
20 after that everything was put on hold during the  
21 reorganization.

22 Q So you did receive at some point, because  
23 of the bankruptcy, a hold order from BP which you  
24 honored?

25 A I -- you know, I can't remember whether

PAGE 44

44

1 those instructions came from BP or if they came from  
2 Port Erie, quite honestly.

3 I mean, again, we took resin to their plant  
4 based on their requests, so if they didn't ask for  
5 any, we didn't take any.

6 Q Now, you did, at least after the  
7 bankruptcy, because it's evidenced by several -- I  
8 mean, can I release four cars? I'm releasing four --  
9 "Hi, Sharon. I'm releasing 4 cars as instructed  
10 today."

11 A Oh, after the bankruptcy, it was a whole  
12 different system.

13 Q But you didn't even copy Port Erie on that;  
14 you were taking directions from the shipper, BP?

15 A After the -- after, yes.

16 Q And these are cars that were in Mount Fort  
17 Terminal?

18 A No.

19 Those were -- those would have been --  
20 well, the -- I can't remember the volumes at that  
21 point when they went -- when they went into  
22 bankruptcy.

23 A significant change that happened when  
24 they went into bankruptcy was that the number of  
25 railcars that were shipped were considerably less.

PAGE 45

45

1 Q I think your comments were that -- I took a  
2 note -- financial problems, the dates and  
3 circumstances.

4 You were referring to that you had contact  
5 with Sharon Jones, as the shipper, and there were  
6 financial problems, and those were Nexpak financial  
7 problems; correct?

8 A Yes.

9 Q And it wasn't Port Erie financial problems;  
10 was it?

11 A No.

12 Q Port Erie paid their bills to you; didn't  
13 they?

14 A Yes.

15 Q You said date and circumstances changed.

16 Are you referring post bankruptcy you  
17 started having to get --

18 A Yes.

19 Q -- a hold of Sharon Jones?

20 A Yes, post bankruptcy.

21 Q And those were cars that would have been in  
22 your side rail terminals?

23 A After the volume -- when the volume shrank  
24 to the point where we could handle whatever came in,  
25 you know, the eight or nine cars, then the demurrage



SHEET 7 PAGE 46

46

PAGE 48

48

1 was not an issue, because as soon as the car would  
 2 come in, there was space to put it.  
 3 It was only pre bankruptcy when we had all  
 4 these railcars that were sitting out there that  
 5 created the demurrage problem.  
 6 Q Did you get a bill for demurrage?  
 7 A Did I?  
 8 Q Yes.  
 9 A No, but Mount Fort got them on occasion  
 10 because they were part of -- their -- their address  
 11 was part of the bill of lading, and they did get  
 12 copies of -- or, they did get demurrage bills, which  
 13 they forwarded to Port Erie with my drivers when they  
 14 delivered loads.  
 15 Q So you're saying they went in with the  
 16 driver? Do you know who your driver would have  
 17 released them to or got them signed off on?  
 18 A Well, I mean, we had a delivery receipt  
 19 that was signed for every -- and it only happened a  
 20 couple of times, and then the end of that.  
 21 Q Now, with regard to those, did  
 22 Mr. Witkowski call you about, "Hey, we're getting  
 23 these demurrage charges, and we have a problem with  
 24 those," or, I mean, how did that conversation start?  
 25 A I mean, Jim -- we didn't -- we didn't speak

1 Mount Fort Terminal," which is not the address of --  
 2 in fact, they are in Harborcreek, not in Erie.  
 3 A Right, but the railroad needs to have a --  
 4 Q -- drop-off point?  
 5 A Right. You have to have a rail address  
 6 before they can move the car.  
 7 Q And the actual party was disclosed on the  
 8 waybill that said Nexpak was sold to; correct?  
 9 If other than "Ship To," it was "Sold To";  
 10 correct?  
 11 A Yep.  
 12 Q Because this is actually "Ship To" on the  
 13 form?  
 14 A Yes.  
 15 Q And then it says in parentheses,  
 16 "Consignee."  
 17 So that can also be used as a ship to.  
 18 "Ship To" and "Consignee" are not, as you understand  
 19 the regulations, interchangeable; are they?  
 20 A Not necessarily.  
 21 "Consignee" would be -- well, no, you can  
 22 have a "Consignee" and have a "Ship To" on the same --  
 23 on the same document.  
 24 Q But they don't have to be the same person;  
 25 do they?

PAGE 47

47

PAGE 49

49

1 a lot. I mean, we -- the system worked pretty well,  
 2 and we had to deal with all these cars out, and it was  
 3 his problem, not mine, since they were his cars.  
 4 But we never -- I mean, we had  
 5 conversations over the -- over a couple year span of  
 6 time but, again, it wasn't my position to resolve  
 7 those issues.  
 8 Q Now, when you say they're his cars, your  
 9 communication went through Port Erie Plastics;  
 10 correct?  
 11 A Yes.  
 12 Q But you don't know who owned the cars, who  
 13 owned the resin inside the cars, or anything like  
 14 that; you weren't a party to that?  
 15 A No, I wasn't.  
 16 I mean, you know, our instructions -- I  
 17 mean, in our dealings with the railroad -- I mean, the  
 18 instructions that I saw and the information that I  
 19 received, based on bills of lading and such, were that  
 20 the cars were consigned to Port Erie Plastics.  
 21 That was as far as I needed to go with it.  
 22 Q But it was actually consigned to Mount Fort  
 23 Terminal; correct?  
 24 A That's just a delivery address.  
 25 Q Right, but it says, "Port Erie Plastic,

1 A That's true.  
 2 Q And do you know who created those bills?  
 3 A Well, BP would -- would issue a bill of  
 4 lading to -- let's see.  
 5 The origin carrier was Union Pacific  
 6 Railroad.  
 7 Q You didn't produce it, Port Erie didn't  
 8 produce it?  
 9 A No.  
 10 Q It was produced down in Texas?  
 11 A That's right.  
 12 Q BP was selling plastic to be shipped up  
 13 here, and you know that to be for Nexpak projects?  
 14 A No.  
 15 Q Let's --  
 16 A Without seeing that document, you know -- I  
 17 mean, that particular one you showed me, yeah, but  
 18 we -- I didn't know who they were. I don't know.  
 19 I mean, when the railcar gets here, I mean,  
 20 they could be using that resin for somebody else as  
 21 far as I know. I have no idea.  
 22 Q Let me re-ask this. Maybe it's a little  
 23 easier with your personal knowledge this way.  
 24 Other than the shipments that you're aware  
 25 of for Nexpak plastic, that contract and these

PAGE 50

50

1 machines, are you aware of Port Erie Plastics having  
2 resin delivered through you for any other contract  
3 during this relevant time period?

4 A No.

5 Q Port Erie Plastics didn't use you on a  
6 regular basis to bring in all their plastic?

7 A No.

8 Q Do you know where they did get their  
9 plastic?

10 A No.

11 Q So your only connection with BP selling  
12 plastic that ended up at Port Erie was related to the  
13 Nexpak contract, to the best of your knowledge?

14 A Yes.

15 Q Okay.

16 Did you differentiate in any way this form  
17 between Port Erie and Plastek railcars?

18 A No.

19 Q Same form, same fax?

20 A Yes.

21 Q Did you interchange them?

22 A No.

23 Q So it would be a separate shipment for  
24 Port Erie, or release, or would you just say, "I've  
25 just got these car numbers, get them out of here and

PAGE 52

52

1 relevant to this time period --

2 A No.

3 Q -- which is 2003-2002?

4 During your testimony, you said you had to  
5 have the inventory, the car inventory, to them before  
6 noon every Friday.

7 Why did you say that? Was there a --

8 A I guess in one of our conversations over  
9 the years, they decided that you want it there as  
10 early in the morning as possible so they could  
11 probably plan for the weekend.

12 I really have no idea, but that's -- that  
13 was our -- that was what we did.

14 Q Then if you got it to them by noon on  
15 Friday, did they get back in any way with, like, a  
16 schedule for the next week of deliveries, or was it a  
17 day-by-day thing?

18 A It was a day-by-day thing typically handled  
19 with -- between the guys on the ground that were doing  
20 the work.

21 Q And no writings?

22 A No.

23 Q None of these inventories back and forth,  
24 or "Unload cars numbered blah, blah, blah"?

25 A No.

PAGE 51

51

1 bring more in"?

2 A That's right.

3 The railroad only deals with car numbers.

4 Q Okay.

5 A When you release a car number -- or,  
6 release that car number empty, they really at that  
7 point don't care who it belonged to.

8 Q They couldn't care whether your truck went  
9 to Plastek?

10 A No.

11 Q And did you have to deliver the same way  
12 for Plastek?

13 A Yes.

14 Q You had to use the vacuum trucks?

15 A Yes.

16 Q And it was put into silo, also?

17 A Yes.

18 Q And your testimony was, you did not forward  
19 any constructive placement notices to Port Erie  
20 Plastics?

21 A No.

22 Q You just placed that information over onto  
23 your car inventory?

24 A Yes.

25 Q You don't have any other car inventories

PAGE 53

53

1 Q Did any of the plastic out of -- I mean,  
2 how did you keep the railcars separate?

3 I mean, if a Plastek railcar is half  
4 unloaded, and a Port Erie car is half -- two of the  
5 four bins are empty, did your trucks completely -- or,  
6 were they completely assigned to one or the other?

7 A Depending on the circumstances, yes, they  
8 were.

9 We kept -- we had a separate -- the drivers  
10 kept a separate inventory for Port Erie cars and for  
11 Plastek cars.

12 We, again, would try to group them  
13 together.

14 We can't commingle the resin, so we would  
15 make certain that if we had two loads for Port Erie,  
16 we would get them on the same truck, and things like  
17 this.

18 So those are things that the drivers worked  
19 out.

20 But we did keep separate inventories, and  
21 when you walk that track every day for 12 hours a day,  
22 you know which cars are which, pretty much, you know.

23 Q Okay.

24 Do you know if -- do you have any evidence,  
25 I should say, if CSX also faxed constructive notice to

SHEET 8 PAGE 54

54

1 Port Erie? Do you know for a fact?  
 2 A No, I don't.  
 3 MR. PARKS: Okay. Just one second, please.  
 4 (Discussion off the record.)  
 5 MR. PARKS: I have no further questions.  
 6 EXAMINATION  
 7 BY MR. HOWARD:  
 8 Q I just have maybe two minutes worth of -- I  
 9 can hold onto this (indicating).  
 10 Let's look at Bartosik 2.  
 11 Is this an example of the type of form that  
 12 you would use to tell CSX that cars, Port Erie cars,  
 13 had been emptied and released?  
 14 A Yes.  
 15 Q And as you testified in response to  
 16 Mr. Parks' testimony, the form, itself, would not  
 17 identify a car as a Port Erie car versus a Plastek  
 18 car?  
 19 A No, it wouldn't.  
 20 Q But when you did empty and release a  
 21 Port Erie car, that car would appear on a form like  
 22 this that was sent -- was faxed to CSX?  
 23 A Yes.  
 24 Q On the emails that you sent to Sharon Jones  
 25 in November and December of 2004, and I'm looking at

PAGE 56

56

1 outside carriers in to pick up resin out of those  
 2 railcars at Mount Fort and took them to other  
 3 customers.  
 4 Q Let me try to focus this a bit more.  
 5 Right here (indicating) there's an email  
 6 from Sharon Jones to you dated December 27th; correct?  
 7 A Okay.  
 8 Q And she is asking you to "Please release  
 9 the empty cars back to our plant with the heels in  
 10 them"; correct?  
 11 A Correct.  
 12 Q And then right above that is this email  
 13 from you to her, your response to that email?  
 14 A Yes.  
 15 Q And you're telling her that you're  
 16 releasing the four cars as instructed?  
 17 A Yes.  
 18 Q And those four cars were all empty?  
 19 A Well, the term "heel" means that there  
 20 were -- there was some resin left in them, and it  
 21 was -- we never would move a railcar that had any  
 22 product left in them because of unbalance in the  
 23 railcar, itself, as well as putting it back into a  
 24 plant where perhaps it could get commingled once it  
 25 arrived back there.

PAGE 55

55

1 the very first one, it says, "Hi, Sharon. I'm  
 2 releasing the 4 cars as instructed today."  
 3 By releasing cars, you're talking about  
 4 cars that have already been emptied?  
 5 A Well, let's see.  
 6 Q Is that accurate?  
 7 A There were -- oh, okay. "I'm releasing the  
 8 4 cars as instructed today."  
 9 Q In an email that comes right before that --  
 10 A This was December 29th of '04.  
 11 Q Well, before you answer, look at the email  
 12 that comes just before. Now, it would be on the same  
 13 page below it, December 27th, from Sharon Jones to  
 14 Steve Bartosik.  
 15 It says, "Please release the empty cars  
 16 back to our plant."  
 17 And then you follow up on December 29th at  
 18 the top of the page with, "I'm releasing the 4 cars as  
 19 instructed today."  
 20 So those four cars had already been  
 21 emptied?  
 22 A There was a period of time when -- as --  
 23 for inventory control, there were some full cars there  
 24 that Nexpak -- or, well, I shouldn't even necessarily  
 25 say "Nexpak," it could have been BP, that they sent

PAGE 57

57

1 So we would never move it unless we would  
 2 get instructions from somebody to do something, and  
 3 this is what this -- that's what the term "heel"  
 4 means.  
 5 Q And the resin that had originally been in  
 6 that car had already been loaded onto a Presque Isle  
 7 truck and sent over to Port Erie; correct?  
 8 A Well, you know, I'm not certain in this  
 9 particular case because, again, depending on the time  
 10 frame, I want to say that we did not haul that  
 11 material because our equipment could take everything  
 12 that was in the railcar.  
 13 When over-the-road outside carriers would  
 14 come in to pick up this resin, they could not carry  
 15 as much as we did, so they would leave eight or  
 16 ten thousand pounds in one of those compartments, and  
 17 that's what created the heel.  
 18 Q So when you unloaded a railcar, there was  
 19 no heel left?  
 20 A So we got it all. All right?  
 21 So I want to say that, you know, the reason  
 22 I gave you guys these documents was so that you could  
 23 see that we would -- that we would never would do  
 24 anything without instructions from somebody.  
 25 We never it took upon ourselves to move any

PAGE 58

58

1 product without authorization from somebody else.  
 2 Q And the instructions that you got to move  
 3 resin from Mount Fort to Port Erie came from  
 4 Port Erie; correct?

5 A Yes.

6 MR. HOWARD: I have no further questions.

7 MR. PARKS: I have some since you brought  
 8 it up, and thank you for doing that.

9 EXAMINATION

10 BY MR. PARKS:

11 Q Now, you said other trucking companies --

12 A Yes.

13 Q -- would come in to Mount Fort --

14 A Yes.

15 Q -- and hook onto the trains that were in  
 16 your possession, suck out plastic resin, and then  
 17 deliver it to somebody else other than Port Erie?

18 A Yes.

19 Q And these are what you would term as  
 20 Port Erie cars?

21 A Yes.

22 Q They were delivered not for Plastek, but  
 23 for Port Erie?

24 A That's right.

25 Q And do you know where those shipments of

PAGE 60

60

1 A Vaguely.

2 Q It did occur?

3 A I'm not sure.

4 I remember --

5 Q You said "vaguely."

6 A I remember --

7 Q What do you remember?

8 A Not much. I'm just an old, retired guy.

9 It was probably four or five years ago, and  
 10 there -- there were some reconsignments, but I can't  
 11 swear to when it happened and the products that were  
 12 involved.

13 Q Was Port Erie directing those  
 14 reconsignments?

15 A I have no idea.

16 Q Was it BP; do you remember?

17 I mean, was somebody else coming and  
 18 saying, "Hey, get this," or do you recall where the --  
 19 you know, what general location did those go?

20 A I can't remember.

21 Those cars could have been diverted  
 22 anywhere in route from the origin to before they got  
 23 here, after they got here, as I said, so I can't  
 24 testify to that.

25 I remember -- you know, it may have

PAGE 59

59

1 plastic resin ended up?

2 A No.

3 Q They weren't to Port Erie; were they?

4 A I --

5 Q You just said they were over-the-road  
 6 carriers.

7 A Yeah.

8 Probably not but, again, this was post  
 9 bankruptcy.

10 Q Right, but it is your belief that either BP  
 11 or Nexpak was directing those?

12 A Yes.

13 Q You were allowing those people to come in  
 14 and take out of these cars?

15 A Yeah.

16 Q Because you didn't care who owned the  
 17 plastic?

18 A That's correct.

19 Q Port Erie wasn't screaming that, "That's  
 20 our plastic"?

21 A That's correct.

22 Q Do you recall some different types of resin  
 23 from Atofina being delivered to Erie and then moved to  
 24 Atlanta without being tapped?

25 Do you recall that?

PAGE 61

61

1 happened but, you know, the diversions in many cases  
 2 take place -- I mean, you got 1500 miles. Typically a  
 3 ten-day transit time protects us.

4 So, I mean, a lot of things can happen in  
 5 between there.

6 Those cars might have gone down there, but  
 7 they may have gone down there long before they got to  
 8 Erie.

9 Q Now, with respect to that, do you recall  
 10 any diversions, or do you have a recollection of any  
 11 diversions that would have gone to Canton, Ohio?

12 A I -- yes, it did happen but, again, we  
 13 were -- we -- Presque Isle Trucking was not party to

14 the bill of lading contract, and as such, had no legal  
 15 right to do anything with that product or to have any  
 16 say over what happened to those cars.

17 Those instructions had to come from either  
 18 the shipper or someone else that was party to that  
 19 document.

20 Q Do you know if Port Erie had the ability to  
 21 do those diversions?

22 A Yes.

23 Q They did?

24 A They're party to the bill of lading.

25 Q Now, they're on the bill of lading.



SHEET 9 PAGE 62

62

1 Do you know if they are party to the bill  
2 of lading?  
3 A Yes.  
4 Q How do you know that?  
5 A Because their name is on it.  
6 Q Just because BP puts it on it?  
7 If I put your name on a \$200,000 note that  
8 says, "You owe me \$200,000," are you a party to that  
9 contract?  
10 A Why would you do that?  
11 Q Well, why would I do that?  
12 A I don't know. You and I would be talking  
13 about.  
14 I would not allow anyone to put my name on  
15 a document like that, especially if I had seen the  
16 document.  
17 Q Right.  
18 Now, that's the question. Did Port Erie  
19 ever see that document, the bill of lading?  
20 A I have no idea.  
21 Q Well, it was sent to you by the shipper;  
22 correct?  
23 I'm referring to the bill of lading, which  
24 is Witkowski Deposition No. 5.  
25 You said you got those from BP.

PAGE 63

63

1 A Yeah, yeah.  
2 Well, I got them faxed to me.  
3 Now, you got -- this has Port Erie's fax  
4 number on it. I don't know --  
5 Q Well, that comes from Port Erie, but do you  
6 know where this came from originally?  
7 A No.  
8 Q Because I can tell you, these were  
9 created -- were found after the lawsuit was filed.  
10 If you notice, it's June 15th, 2005, way  
11 after the fact; isn't it?  
12 A Oh, you mean when the document was faxed?  
13 Q When it came to Port Erie Plastics.  
14 It does say June 15th, because you just  
15 said it came from Port Erie, but it came June 15th,  
16 2005; right?  
17 A Uh-huh.  
18 Q And you got these?  
19 A Yes.  
20 Q And those are created, your prior testimony  
21 is, created by BP?  
22 A The document is, yes.  
23 Q Now, do you also recall diversions of resin  
24 to Atlanta, Georgia?  
25 A Other than the one you just spoke about?

PAGE 64

64

1 Q Well, we talked about Canton, Ohio.  
2 A You mentioned Atofina earlier, just a  
3 moment ago.  
4 Q Right, the Atofina.  
5 A Other than -- I mean, I remember it may  
6 have happened.  
7 I can't remember exactly if it -- you know,  
8 when it did or what was involved.  
9 Q You recall something about Atlanta, or do  
10 you not?  
11 I'm not trying to put words in your mouth.  
12 A I remember -- you know, it may have  
13 happened. I remember something about Atlanta. It  
14 may have --  
15 Q Do you know who is located in Canton,  
16 Ohio?  
17 A I believe Nexpak has an office there.  
18 Q Do you know who was located in Atlanta?  
19 A They may have had a plant there.  
20 MR. PARKS: I have no further questions.  
21 MR. HOWARD: Neither do I.  
22 MR. PARKS: Here, do you want to do this  
23 one, it's your witness, about the waiver of  
24 signature?  
25 MR. HOWARD: I subpoenaed him, yes, sure.

PAGE 65

65

1 We don't need to read it. We'll waive.  
2 - - -  
3 (Thereupon, at 2:48 p.m., the deposition  
4 was concluded and signature was waived.)  
5 - - -  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



PAGE 66

66

## 1 CERTIFICATE

2 COMMONWEALTH OF PENNSYLVANIA, )  
3 COUNTY OF ALLEGHENY. ) SS:

4 I, Teresa Constantini Berardi, do hereby certify  
5 that before me, a Notary Public in and for the  
6 Commonwealth aforesaid, personally appeared  
7 STEVE BARTOSIK, who then was by me first duly  
8 cautioned and sworn to testify the truth, the whole  
9 truth, and nothing but the truth in the taking of his  
10 oral deposition in the cause aforesaid; that the  
11 testimony then given by him as above set forth was by  
12 me reduced to stenotypy in the presence of said  
13 witness, and afterwards transcribed by means of  
14 computer-aided transcription.

15 I do further certify that this deposition was  
16 taken at the time and place in the foregoing caption  
17 specified, and was completed without adjournment.

18 I do further certify that I am not a relative,  
19 counsel or attorney of either party, or otherwise  
20 interested in the event of this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 and affixed my seal of office at Pittsburgh,  
23 Pennsylvania, on this \_\_\_\_ day of \_\_\_\_\_,  
24 2006.  
25

\_\_\_\_\_  
Teresa Constantini Berardi, Notary Public  
In and for the Commonwealth of Pennsylvania  
My commission expires October 9, 2008.

- - -

<b>\$</b>	<b>activity</b> [2] 13:2 14:5	<b>background</b> [1] 8:3	42:24 43:4,8 46:1 48:6 50:25 51:
<b>\$200,000</b> [2] 62:7,8	<b>actual</b> [1] 48:7	<b>bankrupt</b> [1] 36:16	3,5,6,23,25 52:5 53:4 54:17,17,
<b>0</b>	<b>actually</b> [4] 18:19 25:3 47:22 48:	<b>bankruptcy</b> [15] 42:5,18 43:1,6,	18,21,21 57:6
<b>04</b> [3] 24:12,25 55:10	12	11,16,23 44:7,11,22,24 45:16,20	<b>care</b> [3] 51:7,8 59:16
<b>05</b> [1] 5:12	<b>add</b> [1] 22:11	46:3 59:9	<b>cargo</b> [1] 41:3
<b>1</b>	<b>address</b> [4] 46:10 47:24 48:1,5	<b>bartosik</b> [18] 1:10,13 2:21,22,23	<b>carriage</b> [1] 8:22
<b>1</b> [5] 16:5,7,10,12 42:18	<b>addressed</b> [1] 18:25	3:1,7,13 16:5,6,10 24:8 27:13,14	<b>carrier</b> [8] 8:11,17,20 10:17 34:
<b>1:35</b> [1] 1:17	<b>adjournment</b> [1] 66:11	32:19 33:7 54:10 55:14	18 35:1,7 49:5
<b>104557</b> [1] 19:12	<b>advice</b> [2] 32:3,5	<b>based</b> [3] 14:13 44:4 47:19	<b>carriers</b> [3] 56:1 57:13 59:6
<b>12</b> [2] 14:3 53:21	<b>aforesaid</b> [2] 66:5,7	<b>basically</b> [2] 6:3 8:21	<b>carry</b> [2] 32:1 57:14
<b>14</b> [2] 4:2 9:8	<b>ago</b> [4] 9:22 31:13 60:9 64:3	<b>basis</b> [2] 26:10 50:6	<b>cars</b> [78] 12:13,15,15,16,17,18,23
<b>1500</b> [1] 61:2	<b>agreement</b> [3] 8:24 12:10,11	<b>bay</b> [1] 15:8	13:5,10,14,21,23 14:6,9,10,13
<b>15th</b> [3] 63:10,14,15	<b>aligned</b> [1] 10:23	<b>became</b> [2] 36:18,22	15:12 17:16,23 18:19 19:10 21:2,
<b>16</b> [1] 2:1	<b>allegheeny</b> [1] 66:3	<b>behalf</b> [2] 2:2,7	5 25:1,12,22 28:1,6,7,9,12,20,23
<b>16506</b> [1] 3:16	<b>allow</b> [1] 62:14	<b>belief</b> [1] 59:10	29:15 31:16,19,25 32:7,8 33:17,
<b>16507-1498</b> [2] 1:17 2:10	<b>allowing</b> [1] 59:13	<b>believe</b> [5] 25:24 27:4 29:3,13 64:	18 34:10 36:22 42:21 43:1 44:8,
<b>1991</b> [2] 9:9 35:17	<b>almost</b> [2] 4:2 9:8	17	9,16 45:21,25 47:2,3,8,12,13,20
<b>2</b>	<b>already</b> [5] 40:25 43:8 55:4,20	<b>belonged</b> [1] 51:7	52:24 53:10,11,22 54:12,12 55:2,
<b>2</b> [7] 1:11 2:23 27:13,15,18 33:12	57:6	<b>below</b> [1] 55:13	3,4,8,15,18,20,23 56:9,16,18 58:
54:10	<b>amcx</b> [1] 19:12	<b>benefit</b> [1] 35:11	20 59:14 60:21 61:6,16
<b>2:48</b> [1] 65:3	<b>amoco</b> [2] 24:15 31:3	<b>berardi</b> [3] 1:15 66:4,19	<b>case</b> [3] 4:8 38:21 57:9
<b>2002-2003</b> [8] 10:1,13 20:22 23:	<b>amount</b> [1] 14:8	<b>best</b> [2] 4:18 50:13	<b>cases</b> [1] 61:1
10 24:17 25:5 30:19,25	<b>another</b> [4] 14:14 33:25 34:3 40:	<b>between</b> [8] 5:15 6:1 8:19,24 25:	<b>casual</b> [1] 31:15
<b>2003</b> [3] 17:12 25:23,25	3	10 50:17 52:19 61:5	<b>cause</b> [1] 66:7
<b>2003-2002</b> [1] 52:3	<b>answer</b> [5] 4:18,19,24 34:9 55:11	<b>bill</b> [16] 5:23 6:18 21:13,13 37:24	<b>cautioned</b> [1] 66:6
<b>2004</b> [2] 42:4 54:25	<b>anybody</b> [1] 41:24	38:4,8 46:6,11 49:3 61:14,24,25	<b>cell</b> [1] 26:15
<b>2005</b> [3] 2:5 63:10,16	<b>anyway</b> [1] 4:16	62:1,19,23	<b>certain</b> [5] 36:9 41:7 42:10 53:15
<b>2006</b> [1] 1:11	<b>appear</b> [2] 22:6 54:21	<b>bills</b> [9] 6:22 23:22 36:24 38:24	57:8
<b>2008</b> [1] 66:20	<b>appearances</b> [1] 2:1	39:3 45:12 46:12 47:19 49:2	<b>certificate</b> [1] 66:1
<b>26th</b> [1] 19:13	<b>appeared</b> [2] 22:7 66:5	<b>bins</b> [1] 53:5	<b>certified</b> [1] 3:3
<b>27</b> [1] 2:23	<b>apply</b> [1] 34:2	<b>bit</b> [1] 56:4	<b>certify</b> [3] 66:4,10,12
<b>27th</b> [2] 55:13 56:6	<b>approximately</b> [1] 10:3	<b>blah</b> [3] 52:24,24,24	<b>cfo</b> [1] 10:5
<b>29th</b> [2] 55:10,17	<b>area</b> [2] 18:13 20:9	<b>body</b> [1] 29:8	<b>ch</b> [1] 3:24
<b>3</b>	<b>areas</b> [1] 32:8	<b>both</b> [2] 21:15 29:11	<b>change</b> [1] 44:23
<b>3</b> [3] 2:17 17:1,1	<b>arisen</b> [1] 24:23	<b>bottom</b> [4] 19:24,25 29:17 34:3	<b>changed</b> [1] 45:15
<b>3708</b> [1] 3:15	<b>around</b> [3] 3:20 25:19 42:25	<b>boxed</b> [1] 35:4	<b>charges</b> [6] 14:8 23:9,21 31:6 38:
<b>4</b>	<b>arrangement</b> [2] 12:3,4	<b>boy</b> [1] 43:5	22 46:23
<b>4</b> [4] 44:9 55:2,8,18	<b>arrived</b> [7] 15:3 17:5,20 21:15,18	<b>bp</b> [26] 24:15 25:10,12,22 31:3 36:	<b>check</b> [1] 41:24
<b>4-1-02</b> [1] 2:23	22:1 56:25	24 38:5,11,12,14,19 42:19,23 43:	<b>chuck</b> [1] 3:7
<b>45</b> [1] 8:7	<b>ash</b> [1] 15:10	18,23 44:1,14 49:3,12 50:11 55:	<b>circumstances</b> [4] 25:19 45:3,
<b>5</b>	<b>assigned</b> [2] 14:9 53:6	25 59:10 60:16 62:6,25 63:21	15 53:7
<b>5</b> [2] 38:7 62:24	<b>associate</b> [1] 33:5	<b>bring</b> [6] 15:14 29:6,18 34:3 50:6	<b>civil</b> [1] 1:14
<b>58</b> [1] 2:19	<b>associated</b> [1] 35:7	51:1	<b>claims</b> [1] 23:23
<b>6</b>	<b>association</b> [1] 35:22	<b>bringing</b> [1] 41:4	<b>clogging</b> [1] 13:20
<b>65</b> [2] 9:24 10:3	<b>assume</b> [2] 4:25 7:13	<b>britton</b> [2] 1:16 2:8	<b>close</b> [1] 6:8
<b>8</b>	<b>atlanta</b> [5] 59:24 63:24 64:9,13,	<b>brought</b> [2] 15:12 58:7	<b>code</b> [1] 26:20
<b>8931</b> [1] 20:17	18	<b>bulk</b> [3] 11:10 34:22 36:3	<b>codes</b> [1] 21:14
<b>8949</b> [1] 20:17	<b>atofina</b> [3] 59:23 64:2,4	<b>business</b> [10] 8:8,13 9:14 24:2	<b>column</b> [2] 22:6 28:18
<b>9</b>	<b>attached</b> [1] 2:22	30:5 35:7,25 39:15 40:2,23	<b>come</b> [7] 14:13 41:17 46:2 57:14
<b>99</b> [1] 29:1	<b>attempt</b> [1] 32:12	<b>buying</b> [1] 9:15	58:13 59:13 61:17
<b>A</b>	<b>attempting</b> [1] 32:3	<b>C</b>	<b>comes</b> [3] 55:9,12 63:5
<b>ability</b> [2] 4:19 61:20	<b>attempts</b> [1] 32:7	<b>call</b> [13] 5:10,14 6:20 7:13,15 19:	<b>coming</b> [4] 13:13 18:21 39:3 60:
<b>above</b> [2] 13:24 56:12	<b>attorney</b> [2] 6:24 7:8	21 30:14,15 36:10 41:10,22,23	17
<b>accrual</b> [1] 31:5	<b>authority</b> [3] 8:17,17,20	46:22	<b>commencing</b> [1] 1:17
<b>accruing</b> [1] 31:17	<b>authorization</b> [1] 58:1	<b>called</b> [4] 1:13 3:2,24 40:3	<b>comments</b> [1] 45:1
<b>accurate</b> [2] 3:8 55:6	<b>availability</b> [1] 41:8	<b>calling</b> [1] 36:8	<b>commerce</b> [2] 2:4 8:12
<b>accusing</b> [1] 43:17	<b>available</b> [1] 21:10	<b>calls</b> [4] 5:8,24 6:1 27:11	<b>commercial</b> [1] 32:11
<b>action</b> [2] 18:16 66:13	<b>avenue</b> [1] 15:11	<b>came</b> [9] 24:21 44:1,1 45:24 58:3	<b>commingle</b> [1] 53:14
	<b>awaiting</b> [1] 17:6	63:6,13,15,15	<b>commingled</b> [1] 56:24
	<b>aware</b> [5] 33:7 38:25 42:4 49:24	<b>canton</b> [3] 61:11 64:1,15	<b>commission</b> [2] 8:12 66:20
	50:1	<b>car</b> [63] 11:21 12:19,21 13:3 14:	<b>commodities</b> [1] 35:2
	<b>away</b> [1] 30:15	14,17,20 15:25 16:2,3 17:5,20	<b>common</b> [8] 8:10,17,18,20 34:14,
	<b>B</b>	18:9,10 19:13,22,25 20:3,16,17	18 35:1,7
	<b>b-a-r-t-o-s-i-k</b> [1] 3:13	21:11,14,15,18 22:2,8,12,20 27:	<b>commonwealth</b> [2] 66:2,5
	<b>back</b> [10] 13:19 38:3 41:25 43:5	22 28:10,18,24 29:4,6,18,25 30:	<b>communication</b> [3] 25:10,21 47:
	52:15,23 55:16 56:9,23,25	16,19 33:20,20,25 34:3 37:14,15	9

communications [4] 5:25 27:6  
30:6 31:1  
companies [3] 10:9 11:1 58:11  
company [8] 3:24 9:17,21 34:14,  
14 35:6 36:14 38:18  
company's [2] 9:7,9  
compared [2] 8:22 32:15  
compartments [1] 57:16  
complete [1] 21:5  
completed [1] 66:11  
completely [2] 53:5,6  
computer-aided [2] 1:20 66:9  
concern [2] 41:5 42:13  
concerned [1] 41:7  
concerning [3] 6:21 25:22 30:18  
concluded [1] 65:4  
connection [2] 4:8 50:11  
consider [1] 12:20  
considerably [1] 44:25  
consigned [2] 47:20,22  
consignee [4] 48:16,18,21,22  
constantini [3] 1:15 66:4,19  
constructive [19] 17:2,3,8,17,19,  
23 18:1,7 20:11,13 21:2,9,17,20,  
25 37:9,22 51:19 53:25  
constructively [4] 20:12 22:8,13,  
14  
contact [8] 24:16,19 26:8,12,13  
42:19 43:3 45:4  
contacts [1] 5:7  
contents [1] 14:20  
contract [11] 8:11,16,22,23,25  
39:23 49:25 50:2,13 61:14 62:9  
control [3] 41:14 43:4 55:23  
controls [1] 36:17  
conversation [13] 6:10,15 7:16,  
25 8:5 12:21 31:11,15,21 33:12  
36:13 40:13 46:24  
conversations [8] 8:2 30:18 38:  
11,14,16 40:7 47:5 52:8  
copies [3] 24:3 28:16 46:12  
copy [5] 7:20 29:10 38:1,4 44:13  
corner [1] 17:14  
corporation [2] 10:11,19  
correct [31] 15:1 21:23,24 22:5,9,  
10 25:11,14 30:3 33:11,15,25 34:  
1,15,16 37:22 39:4 42:21 45:7  
47:10,23 48:8,10 56:6,10,11 57:  
7 58:4 59:18,21 62:22  
couldn't [3] 13:20 23:16 51:8  
counterparts [1] 26:18  
county [1] 66:3  
couple [8] 6:1 9:22 15:17 23:23  
30:10 43:7 46:20 47:5  
course [1] 34:13  
court [4] 1:1 3:11 16:9 27:17  
courtesy [1] 18:20  
courtyard [1] 6:12  
cover [2] 16:18,21  
cp [2] 22:3,11  
created [6] 46:5 49:2 57:17 63:9,  
20,21  
credit [2] 36:21 38:17  
crew [1] 15:14  
csx [24] 1:4 2:23 5:15 15:6,12,14,  
20,24 17:1,10,20 18:13 19:18,21

21:10 27:24 28:10,15 29:5 33:22  
37:3 53:25 54:12,22  
cuff [1] 35:24  
currently [2] 3:14,17  
curtail [1] 13:14  
customer [8] 13:1 17:5 22:20 23:  
7 24:14 29:12 40:3,4  
customers [3] 34:20 41:8 56:3

## D

daily [1] 27:6  
date [12] 1:17 16:4 19:12,14 20:9,  
12 22:8,12 25:17,18 28:4 45:15  
dated [3] 2:23 17:12 56:6  
dates [4] 6:2 21:3 30:11 45:2  
dave [3] 26:25,25 27:1  
day [9] 1:17 15:17 19:15 26:16,17  
41:21 53:21,21 66:15  
day-by-day [2] 52:17,18  
deal [2] 39:22 47:2  
dealing [1] 22:16  
dealings [1] 47:17  
deals [1] 51:3  
december [6] 6:9 54:25 55:10,  
13,17 56:6  
decided [1] 52:9  
defendant [2] 1:8 2:7  
defense [2] 6:24 7:9  
deliver [3] 42:23 51:11 58:17  
delivered [6] 43:10,15 46:14 50:  
2 58:22 59:23  
deliveries [1] 52:16  
delivering [2] 41:3 42:13  
delivery [4] 22:21 26:16 46:18  
47:24  
demurrage [14] 4:12 5:23 6:18,  
22 23:9 31:6,17 32:9 38:22 45:  
25 46:5,6,12,23  
depending [5] 13:2 14:5 15:17  
53:7 57:9  
deposed [2] 3:4 4:3  
deposition [12] 1:10,13 2:21 4:  
17 16:6 27:14 33:12 42:18 62:24  
65:3 66:7,10  
depositions [1] 4:7  
describe [1] 11:6  
described [1] 27:9  
destination [2] 12:20 17:5  
die [1] 11:3  
difference [1] 8:19  
different [4] 20:2,21 44:12 59:22  
differentiate [1] 50:16  
difficult [1] 34:8  
directing [2] 59:11 60:13  
directions [1] 44:14  
directly [1] 39:6  
disclosed [2] 37:20 48:7  
discuss [2] 31:5,8  
discussed [3] 32:6 40:10,10  
discussion [1] 54:4  
dispose [1] 23:25  
distinguish [1] 33:19  
district [2] 1:1,2  
diversion [1] 30:19  
diversions [5] 61:1,10,11,21 63:  
23  
divert [1] 30:16

diverted [2] 30:22 60:21  
document [16] 19:4 22:23 27:18,  
19,21 33:13 37:11 38:6 48:23 49:  
16 61:19 62:15,16,19 63:12,22  
documents [8] 2:22 6:5 7:19,20  
16:19 21:15 23:2 57:22  
doing [6] 25:23 27:3 35:18 39:15  
52:19 58:8  
done [3] 29:25 35:25 40:2  
down [8] 13:12,20 15:7 33:22 42:  
15 49:10 61:6,7  
downing [1] 15:11  
downsized [1] 9:21  
drive [1] 3:16  
driver [2] 46:16,16  
drivers [8] 26:12,14 27:6 30:1 41:  
16 46:13 53:9,18  
driveways [1] 13:16  
drop-off [1] 48:4  
dropped [1] 37:2  
duly [1] 3:3  
during [17] 10:1,13 20:7 22:1 24:  
16 25:5,8 26:9 30:4,8,19,24 36:  
12 42:15 43:20 50:3 52:4

## E

each [1] 28:17  
earlier [3] 13:8 29:3 64:2  
early [1] 52:10  
easier [1] 49:23  
east [1] 32:11  
eight [5] 13:5,25 14:10 45:25 57:  
15  
ein [1] 10:19  
either [4] 12:17 22:19 59:10 61:  
17  
email [8] 24:6,8 26:3 55:9,11 56:  
5,12,13  
emails [1] 54:24  
employed [2] 3:17 4:1  
employees [4] 9:14,19 10:2 41:2  
employer [1] 23:5  
emptied [9] 14:17 15:24 16:4 25:  
13 29:21,25 54:13 55:4,21  
empty [16] 14:14 15:22 16:2,2 19:  
25 20:19 27:22 28:1,10 29:4 51:  
6 53:5 54:20 55:15 56:9,18  
emptying [2] 14:18,19  
end [5] 3:20 6:8 24:7 40:12 46:20  
ended [2] 50:12 59:1  
entire [1] 9:13  
entity [1] 30:7  
equipment [2] 9:15 57:11  
erie [94] 1:7,21 2:10 3:16 5:16,20  
6:12 8:4,14,25 11:7,9,11 12:17,  
20,25 13:5 14:22,25 17:24 18:10,  
25 19:7 21:4,23 26:7 27:12 28:7,  
11,17,20,22,24 30:2,5 31:6 32:  
11 33:8,14,19 34:7,11 35:19,22  
36:1,20 37:7,10,20 39:7,9,12,15  
41:12 43:9 44:2,13 45:9,12 46:  
13 47:9,20,25 48:2 49:7 50:1,5,  
12,17,24 51:19 53:4,10,15 54:1,  
12,17,21 57:7 58:3,4,17,20,23  
59:3,19,23 60:13 61:8,20 62:18  
63:5,13,15  
erie's [1] 63:3

especially [1] 62:15  
esquire [1] 2:9  
established [3] 34:17 35:14,15  
even [2] 44:13 55:24  
event [1] 66:13  
everything [3] 9:16 43:20 57:11  
evidence [1] 53:24  
evidenced [1] 44:7  
exactly [4] 5:9 6:2 37:20 64:7  
examination [4] 3:5 32:17 54:6  
58:9  
example [2] 17:8 54:11  
examples [2] 23:6,12  
except [1] 21:1  
exercising [1] 43:4  
exhibit [10] 2:21 16:6,10,11,12  
27:14,18 33:12 38:7 42:18  
existence [1] 38:25  
existing [1] 43:8  
expedite [1] 29:15  
experience [1] 8:3  
expires [1] 66:20  
explaining [1] 16:19  
express [1] 3:24  
extra [3] 13:3,23,24

## F

f-o-r-t [1] 11:15  
facilities [1] 33:21  
facility [2] 12:11 32:13  
fact [6] 31:16 40:10 42:17 48:2  
54:1 63:11  
fair [2] 5:1 29:24  
familiar [3] 5:19 36:5,7  
far [7] 17:6 23:20,22 37:20,21 47:  
21 49:21  
fax [11] 2:23 16:1,2,2,21,25 21:12  
29:4 37:12 50:19 63:3  
faxed [7] 16:20 23:1 29:11 53:25  
54:22 63:2,12  
february [1] 1:11  
federal [1] 1:14  
fee [1] 11:21  
field [3] 26:4,5 27:2  
filed [5] 42:5,11 43:11,16 63:9  
files [1] 23:6  
filing [1] 42:25  
final [1] 35:3  
financial [5] 24:23 45:2,6,6,9  
financing [1] 10:25  
find [8] 22:22,24,25 23:15,16 32:  
7,20 41:23  
fine [1] 5:2  
first [12] 3:3 5:5,10 7:3 16:14,15,  
16 18:3 19:11 31:10 33:11 55:1  
five [2] 3:25 60:9  
focus [1] 56:4  
follow [1] 55:17  
follows [1] 3:4  
form [15] 16:2 20:21,25 22:7 27:  
25 28:3,11 29:8 33:18 48:13 50:  
16,19 54:11,16,21  
format [1] 4:18  
forms [3] 22:7 28:16,17  
fort [25] 11:14,20 12:1 13:13 14:  
12,19 15:3,13,20 18:11 28:4,13,  
18 29:2,25 34:6,10 37:3 44:16

46:9 47:22 48:1 56:2 58:3,13  
 forth <sup>[1]</sup> 52:23  
 forward <sup>[3]</sup> 37:6,9 51:18  
 forwarded <sup>[3]</sup> 7:19,20 46:13  
 found <sup>[1]</sup> 63:9  
 four <sup>[7]</sup> 44:8,8 53:5 55:20 56:16,  
 18 60:9  
 frame <sup>[5]</sup> 10:14 24:25 30:8,9 57:  
 10  
 freight <sup>[3]</sup> 18:4 23:20,22  
 friday <sup>[5]</sup> 19:6 21:23,24 52:6,15  
 friday's <sup>[1]</sup> 22:3  
 front <sup>[1]</sup> 15:8  
 full <sup>[3]</sup> 29:6 30:21 55:23  
 further <sup>[6]</sup> 32:1 54:5 58:6 64:20  
 66:10,12

## G

g-u-i-l-f-o-r-d <sup>[1]</sup> 3:15  
 gave <sup>[3]</sup> 21:11 37:21 57:22  
 ge <sup>[1]</sup> 32:12  
 general <sup>[4]</sup> 9:5,12 35:2 60:19  
 generated <sup>[1]</sup> 19:6  
 georgia <sup>[1]</sup> 63:24  
 gets <sup>[1]</sup> 49:19  
 getting <sup>[3]</sup> 36:19 40:1 46:22  
 give <sup>[6]</sup> 4:16 19:22 29:19 32:3,5  
 34:20  
 given <sup>[3]</sup> 4:7 12:14 13:10  
 gives <sup>[1]</sup> 18:3  
 giving <sup>[1]</sup> 8:3  
 got <sup>[24]</sup> 18:20,20 19:1 29:10 36:  
 22 37:5,24 38:4,24 41:25 46:9,  
 17 50:25 52:14 57:20 58:2 60:22,  
 23 61:2,7 62:25 63:2,3,18  
 gross <sup>[1]</sup> 18:4  
 ground <sup>[1]</sup> 52:19  
 group <sup>[12]</sup> 10:5,8,9,9,15,21,23 11:  
 2 12:17,23 13:3 53:12  
 guess <sup>[2]</sup> 6:19 52:8  
 guilford <sup>[1]</sup> 3:15  
 guy <sup>[2]</sup> 29:14 60:8  
 guys <sup>[3]</sup> 27:1 52:19 57:22

## H

half <sup>[3]</sup> 6:14 53:3,4  
 hand <sup>[7]</sup> 16:18 19:25 29:8,18 32:  
 7 36:20 66:14  
 handed <sup>[1]</sup> 16:9  
 handle <sup>[2]</sup> 35:2 45:24  
 handled <sup>[1]</sup> 52:18  
 handwritten <sup>[1]</sup> 2:1  
 happen <sup>[2]</sup> 61:4,12  
 happened <sup>[8]</sup> 20:7 44:23 46:19  
 60:11 61:1,16 64:6,13  
 happening <sup>[1]</sup> 41:6  
 happens <sup>[1]</sup> 40:23  
 harborcreek <sup>[1]</sup> 48:2  
 haul <sup>[2]</sup> 35:21 57:10  
 hauling <sup>[1]</sup> 40:16  
 heard <sup>[1]</sup> 41:2  
 heel <sup>[4]</sup> 56:19 57:3,17,19  
 heels <sup>[1]</sup> 56:9  
 held <sup>[3]</sup> 9:6 10:11 43:1  
 help <sup>[1]</sup> 40:14  
 hereby <sup>[1]</sup> 66:4  
 hereinafter <sup>[1]</sup> 3:3

hereunto <sup>[1]</sup> 66:14  
 hi <sup>[2]</sup> 44:9 55:1  
 high <sup>[1]</sup> 9:23  
 highway <sup>[1]</sup> 15:8  
 hired <sup>[2]</sup> 35:13,15  
 hiring <sup>[1]</sup> 9:14  
 hold <sup>[5]</sup> 43:18,20,23 45:19 54:9  
 home <sup>[1]</sup> 23:3  
 honestly <sup>[1]</sup> 44:2  
 honored <sup>[1]</sup> 43:24  
 hook <sup>[1]</sup> 58:15  
 hour <sup>[1]</sup> 6:14  
 hours <sup>[1]</sup> 53:21  
 howard <sup>[13]</sup> 2:17,1 3:6,7 16:5,8  
 27:13,16 32:16 54:7 58:6 64:21,  
 25  
 hurt <sup>[1]</sup> 12:12

## I

idea <sup>[6]</sup> 6:18 42:2 49:21 52:12 60:  
 15 62:20  
 identical <sup>[2]</sup> 8:2 20:25  
 identification <sup>[2]</sup> 16:7 27:15  
 identified <sup>[3]</sup> 17:16 19:10 22:2  
 identify <sup>[1]</sup> 54:17  
 illegal <sup>[2]</sup> 43:14,17  
 illig <sup>[2]</sup> 1:16 2:8  
 inc <sup>[2]</sup> 1:4,7  
 inception <sup>[2]</sup> 9:7,9  
 indicates <sup>[2]</sup> 17:1 19:12  
 indicating <sup>[6]</sup> 16:17,24 33:14 37:  
 11 54:9 56:5  
 industries <sup>[1]</sup> 10:21  
 information <sup>[11]</sup> 18:15,18 19:24  
 20:10 21:8 22:12 26:23 31:22 36:  
 19 47:18 51:22  
 initial <sup>[2]</sup> 6:20 36:14  
 initiated <sup>[1]</sup> 27:11  
 injection <sup>[1]</sup> 40:23  
 inquire <sup>[2]</sup> 36:11 39:9  
 inside <sup>[1]</sup> 47:13  
 instructed <sup>[5]</sup> 44:9 55:2,8,19 56:  
 16  
 instruction <sup>[1]</sup> 29:20  
 instructions <sup>[11]</sup> 4:15 17:6 29:5  
 30:1 44:1 47:16,18 57:2,24 58:2  
 61:17  
 insurance <sup>[2]</sup> 10:24,24  
 interchange <sup>[1]</sup> 50:21  
 interchangeable <sup>[1]</sup> 48:19  
 interested <sup>[1]</sup> 66:13  
 interstate <sup>[1]</sup> 8:12  
 inventories <sup>[5]</sup> 23:13 37:15 51:  
 25 52:23 53:20  
 inventory <sup>[18]</sup> 19:5 20:5,8,21 21:  
 3,5,22 22:4 24:4 29:23 31:24 37:  
 15,21 51:23 52:5,5 53:10 55:23  
 involved <sup>[7]</sup> 8:24 20:16 35:12 36:  
 23 40:11 60:12 64:8  
 involving <sup>[2]</sup> 4:8 6:17  
 irrelevant <sup>[1]</sup> 33:14  
 isle <sup>[23]</sup> 4:2,8 8:8,10,13 9:3 10:2,  
 11,13,14,18,22 11:7,25 14:21 17:  
 9,22 24:2 30:4 34:15,17 57:6 61:  
 13  
 isle's <sup>[1]</sup> 8:16  
 isn't <sup>[2]</sup> 18:12 63:11

issue <sup>[9]</sup> 5:20,22 6:22 23:9,25 31:  
 19 32:6 46:1 49:3  
 issues <sup>[7]</sup> 6:4,17 7:7 23:20 31:25  
 36:21 47:7  
 itself <sup>[3]</sup> 20:25 54:16 56:23

## J

janssen <sup>[1]</sup> 2:3  
 jim <sup>[4]</sup> 19:6 31:9 32:23 46:25  
 job <sup>[4]</sup> 9:11 27:2 32:1,4  
 john <sup>[3]</sup> 2:13 33:1,2  
 johnson <sup>[3]</sup> 2:13 33:1,1  
 joined <sup>[1]</sup> 10:10  
 joint <sup>[2]</sup> 10:20 32:10  
 jones <sup>[12]</sup> 1:16 2:8 24:8,11,12,14,  
 16 45:5,19 54:24 55:13 56:6  
 july <sup>[3]</sup> 3:21 19:13 42:7  
 june <sup>[3]</sup> 63:10,14,15  
 justice <sup>[1]</sup> 13:1

## K

keenan <sup>[1]</sup> 2:3  
 keep <sup>[3]</sup> 23:18 53:2,20  
 kept <sup>[5]</sup> 13:17 26:22 28:23 53:9,  
 10  
 kind <sup>[5]</sup> 23:24 29:15 31:17 34:25  
 41:16  
 kinds <sup>[1]</sup> 41:6  
 knowledge <sup>[2]</sup> 49:23 50:13  
 known <sup>[1]</sup> 30:7

## L

lading <sup>[16]</sup> 21:13,13 36:25 37:25  
 38:4,8,24 46:11 47:19 49:4 61:  
 14,24,25 62:2,19,23  
 last <sup>[6]</sup> 3:11 5:5 6:10,13,16 8:5  
 later <sup>[4]</sup> 20:6 24:22 30:10 38:15  
 law <sup>[1]</sup> 1:16  
 lawsuit <sup>[5]</sup> 5:15 6:3,22 7:7 63:9  
 lease <sup>[8]</sup> 11:9,18,19,20,25 12:3,7  
 19:19  
 leased <sup>[2]</sup> 11:22 13:10  
 least <sup>[2]</sup> 36:1 44:6  
 leave <sup>[1]</sup> 57:15  
 left <sup>[6]</sup> 9:8,25 19:15 56:20,22 57:  
 19  
 left-hand <sup>[1]</sup> 17:13  
 legal <sup>[2]</sup> 10:25 61:14  
 less <sup>[1]</sup> 44:25  
 letter <sup>[1]</sup> 16:18  
 licensed <sup>[2]</sup> 8:11 35:1  
 lieu <sup>[2]</sup> 22:18,18  
 limit <sup>[2]</sup> 13:9 14:8  
 limitations <sup>[2]</sup> 13:12 23:21  
 line <sup>[1]</sup> 16:25  
 lines <sup>[1]</sup> 22:12  
 list <sup>[1]</sup> 33:21  
 listed <sup>[5]</sup> 12:9 28:5,6,14 38:7  
 little <sup>[2]</sup> 3:24 49:22  
 live <sup>[1]</sup> 3:15  
 llp <sup>[1]</sup> 2:8  
 load <sup>[1]</sup> 41:18  
 loaded <sup>[1]</sup> 57:6  
 loads <sup>[7]</sup> 26:19 41:25 43:7,13,15  
 46:14 53:15  
 local <sup>[4]</sup> 15:14 29:9,10,14  
 located <sup>[2]</sup> 64:15,18

location <sup>[2]</sup> 28:23 60:19  
 locations <sup>[2]</sup> 15:6 28:2  
 long <sup>[9]</sup> 3:19 6:13 8:5 9:6 13:19  
 23:18 31:13 43:5 61:7  
 longer <sup>[1]</sup> 20:8  
 look <sup>[7]</sup> 19:3,11 23:12 24:6 26:2  
 54:10 55:11  
 looking <sup>[3]</sup> 20:21 41:17 54:25  
 loop <sup>[1]</sup> 26:23  
 lot <sup>[5]</sup> 30:10 31:20 42:13 47:1 61:  
 4  
 lowboy <sup>[1]</sup> 40:16  
 lower <sup>[1]</sup> 17:13

## M

m-o-u-n-t <sup>[1]</sup> 11:15  
 macdonald <sup>[2]</sup> 1:16 2:8  
 machinery <sup>[2]</sup> 40:25 41:1  
 machines <sup>[1]</sup> 50:1  
 made <sup>[3]</sup> 32:7,10 36:7  
 main <sup>[1]</sup> 41:5  
 maintain <sup>[1]</sup> 23:2  
 maintained <sup>[1]</sup> 24:3  
 maintenance <sup>[1]</sup> 9:15  
 man <sup>[1]</sup> 10:20  
 manager <sup>[3]</sup> 9:5,12,12  
 manpower <sup>[1]</sup> 41:7  
 many <sup>[16]</sup> 4:5 5:9 9:19 10:1 11:  
 25 12:2,14 13:14 17:16 21:2 26:  
 19 31:25 35:20 41:11,25 61:1  
 mark <sup>[3]</sup> 16:5 19:24 27:13  
 marked <sup>[5]</sup> 16:7,10 20:10 27:15,  
 17  
 market <sup>[1]</sup> 2:5  
 marriott <sup>[1]</sup> 6:12  
 marshalling <sup>[1]</sup> 15:11  
 masters <sup>[1]</sup> 19:21  
 material <sup>[1]</sup> 57:11  
 matter <sup>[1]</sup> 7:24  
 maximum <sup>[1]</sup> 12:6  
 mean <sup>[38]</sup> 12:15 13:11,24 14:6,7  
 19:14 20:25 23:21,23,23 30:25  
 31:3,15,24 32:6 40:23 41:21 43:  
 4 44:3,8 46:18,24,25 47:1,4,16,  
 17,17 49:17,19,19 53:1,3 60:17  
 61:2,4 63:12 64:5  
 meaning <sup>[1]</sup> 13:13  
 means <sup>[3]</sup> 22:15 56:19 57:4  
 meet <sup>[1]</sup> 33:2  
 meeting <sup>[1]</sup> 32:11  
 mel <sup>[4]</sup> 26:4,5,18 27:2  
 member <sup>[1]</sup> 10:14  
 memo <sup>[1]</sup> 2:1  
 memory <sup>[1]</sup> 34:8  
 mention <sup>[1]</sup> 39:25  
 mentioned <sup>[1]</sup> 64:2  
 met <sup>[2]</sup> 3:8 5:4  
 middle <sup>[1]</sup> 42:8  
 might <sup>[7]</sup> 3:8 14:2 22:11 31:11  
 33:24 35:8 61:6  
 miles <sup>[1]</sup> 61:2  
 mine <sup>[1]</sup> 47:3  
 minutes <sup>[2]</sup> 8:7 54:8  
 molding <sup>[2]</sup> 11:4 40:23  
 molds <sup>[2]</sup> 40:8,21  
 moment <sup>[2]</sup> 18:9 64:3  
 monday <sup>[1]</sup> 22:1



morning [2] 41:10 52:10  
 most [3] 15:4 24:15 34:5  
 mount [25] 11:14,20 12:1 13:13  
 14:12,19 15:3,13,20 18:11 28:4,  
 13,18 29:2,25 34:6,10 37:3 44:  
 16 46:9 47:22 48:1 56:2 58:3,13  
 mouth [1] 64:11  
 move [9] 19:18 30:21 33:25 40:  
 14 48:6 56:21 57:1,25 58:2  
 moved [2] 25:2 59:23  
 movement [7] 15:19 24:22 29:  
 15 30:15 36:1 40:9,19  
 movements [1] 40:8  
 moving [2] 40:8,25  
 much [13] 20:6,8 21:1,1 24:22 26:  
 21 30:12 32:1 36:18 38:15 53:22  
 57:15 60:8  
 multiple [1] 11:24  
 myrtle [3] 28:3,7,25  
 myself [1] 7:7

### N

name [8] 3:7,10,11,13 33:7 62:5,  
 7,14  
 nature [1] 26:13  
 necessarily [2] 48:20 55:24  
 need [4] 4:15 41:11 42:1 65:1  
 needed [5] 10:25 12:2 25:1 33:  
 20 47:21  
 needs [1] 48:3  
 neither [1] 64:21  
 net [1] 18:5  
 never [8] 13:18,19 30:22 47:4 56:  
 21 57:1,23,25  
 nexpak [23] 30:7 36:6,7,13,15 38:  
 18,19,25 39:1,16,22 40:11,21 42:  
 5 45:6 48:8 49:13,25 50:13 55:  
 24,25 59:11 64:17  
 next [3] 26:2 29:18 52:16  
 nice [1] 33:2  
 nickle [3] 26:25,25 27:5  
 night [3] 5:5 6:10,16  
 nine [1] 45:25  
 none [2] 24:20 52:23  
 noon [3] 21:24 52:6,14  
 normally [1] 12:25  
 nos [1] 2:21  
 notary [2] 1:15 66:19  
 note [5] 29:9,17 33:24 45:2 62:7  
 notes [1] 34:3  
 nothing [1] 18:19  
 notice [27] 17:2,3,9,17,19 18:2,8,  
 20,22 20:11,13 21:9,11,17,21,25  
 22:3,11 28:3,10,11 37:5,6,21,25  
 53:25 63:10  
 notices [3] 17:23 37:10 51:19  
 notification [1] 17:4  
 notified [1] 25:12  
 november [3] 23:1,2 54:25  
 number [21] 5:8 10:19 11:3,4 12:  
 6,9 13:9 14:6 18:3 19:22 20:2,3  
 21:11,14 29:12 31:14,16 44:24  
 51:5,6 63:4  
 numbered [1] 52:24  
 numbers [3] 16:3 50:25 51:3

### O

obtaining [1] 9:14  
 occasion [5] 26:8 29:4 30:6 31:1  
 46:9  
 occasionally [2] 13:22 30:16  
 occasions [1] 36:9  
 occur [2] 15:16 60:2  
 october [1] 66:20  
 office [1] 64:17  
 offices [1] 1:16  
 often [1] 15:16  
 ohio [3] 61:11 64:1,16  
 okay [10] 5:3 16:23 18:6 40:6 50:  
 15 51:4 53:23 54:3 55:7 56:7  
 old [2] 24:3 60:8  
 oldest [2] 20:15,17  
 once [7] 3:9 26:11 29:1 30:13 36:  
 2 42:11 56:24  
 one [30] 2:4 12:7 14:14 15:7,23  
 17:18 19:1,3,11,21 22:11 26:4,6,  
 18 27:1 28:17 29:21 32:10,10 33:  
 18,20 38:9 49:17 52:8 53:6 54:3  
 55:1 57:16 63:25 64:23  
 ones [1] 37:19  
 only [9] 3:24 36:14 37:18 38:14  
 43:19 46:3,19 50:11 51:3  
 open [2] 8:21 13:17  
 opened [1] 43:8  
 operation [4] 9:14,15 11:20 13:  
 20  
 operationally [1] 13:15  
 operations [4] 11:3,4 12:10,12  
 oral [1] 66:7  
 order [4] 14:14 32:13 41:20 43:  
 23  
 origin [5] 18:4,5,5 49:5 60:22  
 originally [2] 57:5 63:6  
 other [19] 7:7 11:1 18:23 26:4 30:  
 17 32:8 34:22,25 35:21 48:9 49:  
 24 50:2 51:25 53:6 56:2 58:11,  
 17 63:25 64:5  
 ourselves [2] 10:23 57:25  
 out [19] 12:11 15:10,11,23 29:15  
 32:20 33:20,23 34:6 41:3,23 46:  
 4 47:2 50:25 53:1,19 56:1 58:16  
 59:14  
 outside [3] 29:23 56:1 57:13  
 over [12] 13:24 29:6 33:22 37:12  
 42:13 43:4 47:5,5 51:22 52:8 57:  
 7 61:16  
 over-the-road [2] 57:13 59:5  
 overall [1] 9:13  
 overloading [1] 12:12  
 owe [1] 62:8  
 own [2] 10:19 35:6  
 owned [11] 10:21,22 22:19 25:4  
 39:9,13 40:19,21 47:12,13 59:16  
 ownership [2] 10:20 34:14

### P

p.c [1] 2:3  
 p.m [2] 1:17 65:3  
 pa [1] 3:16  
 pacific [1] 49:5  
 page [13] 2:21 16:14,15,16,16,23  
 17:1 19:3 24:7 26:2 27:17 55:13,  
 18  
 paid [2] 11:20 45:12

parent [1] 34:14  
 parentheses [1] 48:15  
 parks [16] 7:10,11,20,22,25 32:  
 18,22 33:5,6,8 54:3,5 58:7,10 64:  
 20,22  
 parks' [1] 54:16  
 part [2] 46:10,11  
 particular [12] 15:17 22:22 25:15  
 26:17,22 28:2 33:13 36:1 37:11  
 39:23 49:17 57:9  
 parties [1] 8:24  
 party [8] 18:23 47:14 48:7 61:13,  
 18,24 62:1,8  
 pass [1] 26:19  
 passed [1] 36:20  
 past [3] 23:2,5 40:2  
 paying [1] 32:5  
 payment [1] 39:6  
 pending [2] 5:15 6:3  
 pennsylvania [6] 1:2,21 2:10 18:  
 10 66:2,15  
 people [7] 26:4,6,19 32:11 36:23  
 41:10 59:13  
 per [1] 12:3  
 percent [1] 29:1  
 perhaps [4] 8:7 14:2 35:8 56:24  
 period [17] 10:1 20:22 23:10,13  
 24:13,17 25:6,8 26:9 30:4,19,25  
 36:12,15 50:3 52:1 55:22  
 person [3] 24:16,19 48:24  
 personal [1] 49:23  
 personally [1] 66:5  
 pertaining [1] 1:14  
 phone [12] 5:8,10,14,24 6:1,20 7:  
 13,15 26:16 30:13,15 41:22  
 physically [1] 22:18  
 pick [2] 56:1 57:14  
 pittsburgh [2] 29:13 33:23  
 place [6] 6:11 7:17 14:18,19 25:  
 16 61:2  
 placed [12] 11:21 19:13,14,16 20:  
 9,12 22:8,13,14,19,20 51:22  
 placement [17] 17:2,3,9,17,19,  
 23 18:1,8 20:11,13 21:3,9,17,20,  
 25 37:10 51:19  
 placements [1] 37:22  
 places [1] 29:11  
 plaintiff [3] 1:5 2:2 3:2  
 plan [1] 52:11  
 plant [7] 11:11 40:8 44:3 55:16  
 56:9,24 64:19  
 plastek [33] 10:5,6,7,8,9,15,21,  
 21,23 11:2 12:17,23 13:3,21 28:  
 4,9,21 33:17,20 34:2,7,10,13,20  
 35:3,22 50:17 51:9,12 53:3,11  
 54:17 58:22  
 plastic [18] 10:6 11:4,4,7 12:18  
 39:10,13 47:25 49:12,25 50:6,9,  
 12 53:1 58:16 59:1,17,20  
 plastics [19] 1:7 5:16 8:4,14 11:9  
 12:25 14:23 18:25 19:7 21:5 31:  
 6 33:8,15 47:9,20 50:1,5 51:20  
 63:13  
 play [1] 24:21  
 please [4] 3:12 54:3 55:15 56:8  
 point [16] 9:23,23 18:17 20:15 25:

4 30:22,23,24 36:21 42:12 43:6,  
 22 44:21 45:24 48:4 51:7  
 port [85] 1:7 5:16,20 8:4,14,25 11:  
 7,9 12:17,20,25 13:5 14:22,25  
 17:24 18:25 19:7 21:4,23 26:7  
 27:12 28:7,11,17,20,22,24 30:2,  
 5 31:6 33:8,14,19 34:7,11 35:19,  
 22 36:1,20 37:7,10,20 39:7,9,12,  
 15 41:12 43:9 44:2,13 45:9,12  
 46:13 47:9,20,25 49:7 50:1,5,12,  
 17,24 51:19 53:4,10,15 54:1,12,  
 17,21 57:7 58:3,4,17,20,23 59:3,  
 19 60:13 61:20 62:18 63:3,5,13,  
 15  
 position [2] 9:6 47:6  
 possession [1] 58:16  
 possible [1] 52:10  
 post [5] 42:18,19 45:16,20 59:8  
 pounds [1] 57:16  
 pre [1] 46:3  
 prepaid [1] 39:3  
 prepared [1] 21:22  
 presence [1] 66:8  
 present [1] 12:12  
 presque [24] 4:2,8 8:8,10,13,16  
 9:3 10:2,11,13,14,18,22 11:7,25  
 14:21 17:9,22 24:2 30:4 34:15,  
 17 57:6 61:13  
 presses [5] 40:8,14,19,20 41:4  
 pretty [2] 47:1 53:22  
 prevail [1] 23:5  
 prior [9] 4:1 5:7 6:20 19:3 22:7  
 25:25 36:1 43:15 63:20  
 prischak [1] 35:8  
 private [2] 19:16 21:6  
 privately [1] 10:11  
 probably [7] 4:15 6:8,9 7:18 52:  
 11 59:8 60:9  
 problem [3] 46:5,23 47:3  
 problems [5] 24:23 45:2,6,7,9  
 procedure [2] 1:14 25:16  
 process [5] 4:14 14:18 24:21,24  
 36:23  
 produce [2] 49:7,8  
 produced [2] 28:15 49:10  
 product [10] 14:24 20:18 21:14,  
 16 26:20 29:22 35:4 56:22 58:1  
 61:15  
 products [2] 20:16 60:11  
 projects [1] 49:13  
 protects [1] 61:3  
 provide [3] 6:5 29:5 34:18  
 provided [3] 7:22 11:7,8  
 providing [1] 31:22  
 public [2] 8:21 66:19  
 published [2] 8:20 9:1  
 purchase [1] 40:12  
 purchasing [1] 10:24  
 purposes [3] 10:24 12:21 27:8  
 put [14] 13:3,23 14:2 19:23 22:3  
 26:21 32:8 33:24 43:20 46:2 51:  
 16 62:7,14 64:11  
 puts [1] 62:6  
 putting [2] 13:14 56:23

### Q

quantity [1] 28:16



question [9] 4:17,20,24 35:9 36:  
13,15 37:16 43:7 62:18  
questioning [1] 6:19  
questions [5] 4:18 33:10 54:5  
58:6 64:20  
quite [1] 44:2

## R

rail [8] 11:8,8,12,22 12:10 36:3  
45:22 48:5  
railcar [18] 12:3 14:21 15:2,20 19:  
5,15 21:22 22:4 23:12 37:2,20  
39:21 49:19 53:3 56:21,23 57:12,  
18  
railcars [11] 11:9,11 13:12 14:11  
28:22 40:1 44:25 46:4 50:17 53:  
2 56:2  
railroad [13] 5:21 16:3 21:13 22:  
19 27:23 32:12 38:1,2,5 47:17  
48:3 49:6 51:3  
railroad's [1] 17:4  
rates [2] 8:25 9:1  
re-ask [1] 49:22  
read [1] 65:1  
real [1] 16:16  
really [7] 12:8 13:18 20:6 31:23  
34:13 51:6 52:12  
reason [2] 24:3 57:21  
recall [25] 5:10,13,17,22,24 6:7 7:  
16 8:1,6 24:19 25:15,21 30:18  
31:10 35:24 42:3,24 43:11,18 59:  
22,25 60:18 61:9 63:23 64:9  
receipt [1] 46:18  
receivables [1] 9:17  
receive [5] 17:22 18:7,15 21:20  
43:22  
received [4] 17:10 21:12 39:6 47:  
19  
receiving [4] 26:6 27:1 30:1,2  
recognize [4] 7:14 16:12 27:19  
32:24  
recollection [2] 42:8 61:10  
reconsignments [2] 60:10,14  
record [2] 3:11 54:4  
reduced [1] 66:8  
refer [1] 42:18  
referenced [1] 11:18  
referring [5] 24:24 38:8 45:4,16  
62:23  
regard [3] 33:11 34:5 46:21  
regular [2] 26:10 50:6  
regulations [1] 48:19  
related [1] 50:12  
relationship [2] 8:14 30:5  
relative [1] 66:12  
release [14] 20:1 25:3,22 27:22  
28:11 29:4 42:21 44:8 50:24 51:  
5,6 54:20 55:15 56:8  
released [5] 25:1,13 28:20 46:17  
54:13  
releases [1] 36:22  
releasing [8] 36:17 44:8,9 55:2,3,  
7,18 56:16  
relevant [6] 23:19 30:24 37:16  
38:22 50:3 52:1  
reliability [1] 34:20  
remember [16] 5:9 6:2 25:18 35:

23 43:25 44:20 60:4,6,7,16,20,  
25 64:5,7,12,13  
rent [1] 32:14  
reorganization [1] 43:21  
rep [1] 24:14  
rephrase [1] 4:22  
replace [4] 14:15 20:18,18 29:22  
report [1] 10:4  
reported [2] 10:5 28:12  
reporter [3] 3:12 16:9 27:17  
reporting [2] 27:24 28:1  
represent [1] 28:15  
representing [1] 33:8  
requests [1] 44:4  
requirements [1] 26:16  
reside [1] 3:14  
resin [26] 11:10 12:19 24:15 26:  
19 34:18 35:21 36:18 38:13 39:  
22 40:12 41:11 42:13 44:3 47:13  
49:20 50:2 53:14 56:1,20 57:5,  
14 58:3,16 59:1,22 63:23  
resolve [1] 47:6  
respect [1] 61:9  
response [2] 54:15 56:13  
responsibilities [1] 9:11  
responsibility [1] 9:13  
restrictions [1] 25:7  
retire [1] 3:22  
retired [5] 3:18,19,20,23 60:8  
rich [1] 33:8  
roughly [1] 16:19  
route [1] 60:22  
rules [1] 1:14  
run [1] 9:16  
running [2] 34:6 40:25

## S

same [11] 7:20 12:23 27:8 48:22,  
23,24 50:19,19 51:11 53:16 55:  
12  
saturday [1] 43:12  
saturdays [1] 43:13  
saw [1] 47:18  
saying [2] 46:15 60:18  
says [6] 17:1 47:25 48:15 55:1,15  
62:8  
schedule [2] 41:20 52:16  
scott [2] 2:9 33:4  
screaming [1] 59:19  
search [1] 23:8  
second [3] 11:15 36:20 54:3  
see [8] 17:13 24:9 32:13 41:4 49:  
4 55:5 57:23 62:19  
seeing [1] 49:16  
seen [1] 62:15  
seldom [1] 30:17  
selling [5] 38:12,13,19 49:12 50:  
11  
send [7] 16:3 19:8 27:23,25 29:  
14 36:24 37:14  
sent [13] 7:21 17:20 18:22 19:6  
20:13 21:23 23:6 28:10 54:22,24  
55:25 57:7 62:21  
separate [6] 10:19 50:23 53:2,9,  
10,20  
september [5] 5:12 6:2,21 7:4  
17:12

service [6] 24:14 29:12 34:19,19,  
21 41:8  
services [1] 11:6  
set [1] 66:14  
seven-page [1] 16:11  
several [1] 44:7  
sharon [12] 24:8,11,12,14,16 44:  
9 45:5,19 54:24 55:1,13 56:6  
sheet [1] 16:21  
sheets [1] 24:4  
ship [7] 33:22 35:3 48:9,12,17,18,  
22  
shipment [4] 37:5,6 39:22 50:23  
shipments [2] 49:24 58:25  
shipped [4] 17:24 37:4 44:25 49:  
12  
shipper [10] 18:4 21:12 24:15 25:  
1,3 31:3 44:14 45:5 61:18 62:21  
shippers [1] 31:2  
shipping [3] 37:25 38:12,13  
shouldn't [1] 55:24  
show [3] 22:8 37:19 38:6  
showed [1] 49:17  
showing [1] 33:13  
shown [3] 20:9,10 21:3  
shrank [1] 45:23  
shut [1] 13:20  
side [1] 45:22  
siding [2] 21:6 22:19  
sighting [1] 28:4  
signature [2] 64:24 65:4  
signed [2] 46:17,19  
significant [1] 44:23  
silo [2] 14:25 51:16  
similar [2] 27:2 38:9  
since [5] 4:14 7:6,13 47:3 58:7  
single [2] 11:23 27:17  
sitting [1] 46:4  
six [1] 9:25  
sold [3] 38:25 48:8,9  
solely [1] 10:17  
somebody [6] 49:20 57:2,24 58:  
1,17 60:17  
someone [1] 61:18  
sometimes [1] 33:24  
somewhere [1] 6:9  
soon [1] 46:1  
sorry [2] 7:5 18:5  
sounded [1] 13:9  
space [5] 11:8,12 13:23 32:14 46:  
2  
spaces [3] 11:22 12:2,6  
span [1] 47:5  
speaking [1] 13:15  
special [1] 39:22  
specific [1] 12:9  
specifically [1] 8:23  
specified [1] 66:11  
spell [1] 3:11  
spend [1] 31:20  
spoke [4] 6:24 7:1,3 63:25  
spoken [2] 6:21 7:6  
spot [1] 11:9  
square [1] 2:4  
start [3] 32:20 35:18 46:24  
started [2] 30:15 45:17

state [1] 3:10  
states [1] 1:1  
stenotypy [1] 66:8  
steve [6] 1:10,13 3:1,13 24:8 55:  
14  
still [1] 25:4  
storage [15] 13:4 14:7,8,15 15:4,  
5,13,20 18:13 19:16,19 21:7,10  
25:2 32:15  
street [5] 2:5 15:10 28:3,7,25  
strike [1] 21:21  
stringent [1] 36:18  
stroupe [3] 2:9 33:4,4  
stuff [2] 9:18 23:24  
subject [3] 5:13 6:15 7:24  
subpoenaed [1] 64:25  
subsequent [1] 5:24  
substantial [1] 28:16  
suck [1] 58:16  
sudden [1] 40:1  
summer [2] 3:20 42:8  
supply [1] 39:23  
supporting [1] 40:9  
swap [1] 15:23  
swear [2] 19:1 60:11  
swing [1] 30:21  
switch [1] 15:14  
switches [1] 13:16  
sworn [2] 3:3 66:6  
system [2] 44:12 47:1

## T

talked [5] 11:13 26:11 31:14 40:  
10 64:1  
tapped [1] 59:24  
tariff [1] 9:1  
tariffs [1] 8:21  
tax [1] 35:10  
technically [1] 3:23  
telephone [1] 31:13  
ten [2] 14:2 57:16  
ten-day [1] 61:3  
teresa [3] 1:15 66:4,19  
term [3] 56:19 57:3 58:19  
terminal [10] 11:14 15:21 28:5,  
14,18 34:6 37:3 44:17 47:23 48:  
1  
terminals [1] 45:22  
terms [2] 18:4 22:16  
testified [3] 5:4 29:3 54:15  
testify [2] 60:24 66:6  
testimony [11] 7:21 13:8 20:20  
25:9 28:19 33:10,16 51:18 52:4  
54:16 63:20  
texas [1] 49:10  
there's [4] 16:25 17:18 35:10 56:  
5  
thereupon [3] 16:6 27:14 65:3  
thinking [1] 38:2  
third [2] 16:23 24:7  
thousand [1] 57:16  
thursday [1] 1:11  
tightening [1] 38:17  
tighter [1] 36:22  
till [1] 9:7  
title [2] 9:3 10:10  
today [5] 39:17 44:10 55:2,8,19

together <sup>[1]</sup> 53:13  
 took <sup>[6]</sup> 7:17 14:19 44:3 45:1 56:2 57:25  
 tool <sup>[1]</sup> 11:3  
 top <sup>[2]</sup> 16:25 55:18  
 track <sup>[17]</sup> 11:18,19,21,23 13:6 14:15 15:4,5,13 19:16,16,19,19 21:7,10 32:15 53:21  
 tracks <sup>[5]</sup> 11:10,24,25 13:4 14:7  
 train <sup>[1]</sup> 19:21  
 trains <sup>[1]</sup> 58:15  
 transcription <sup>[2]</sup> 1:20 66:9  
 transit <sup>[1]</sup> 61:3  
 transmitted <sup>[1]</sup> 21:4  
 transport <sup>[1]</sup> 11:10  
 transportation <sup>[2]</sup> 1:4 17:2  
 transported <sup>[1]</sup> 14:21  
 tried <sup>[2]</sup> 13:1 14:8  
 triggered <sup>[1]</sup> 15:19  
 truck <sup>[5]</sup> 14:21 41:16 51:8 53:16 57:7  
 trucking <sup>[19]</sup> 4:2,9 8:9,10,13 9:4 10:12,14,18,22 11:7 17:9,22 34:15,17,23,25 58:11 61:13  
 truckloads <sup>[1]</sup> 41:11  
 trucks <sup>[3]</sup> 35:4 51:14 53:5  
 true <sup>[3]</sup> 14:4 29:7 49:1  
 truth <sup>[1]</sup> 66:6  
 try <sup>[2]</sup> 53:12 56:4  
 trying <sup>[1]</sup> 64:11  
 tuesday <sup>[1]</sup> 22:2  
 turn <sup>[1]</sup> 16:23  
 twice <sup>[4]</sup> 4:6 26:11 42:11,11  
 two <sup>[12]</sup> 8:19,24 11:16,17 13:4 20:16 23:19 28:2,6 53:4,15 54:8  
 type <sup>[4]</sup> 25:9 31:21 40:16 54:11  
 types <sup>[2]</sup> 11:1 59:22  
 typically <sup>[11]</sup> 13:5,7,25 14:9 19:20 23:18 26:12 29:22 43:12 52:18 61:2

## U

ultimate <sup>[1]</sup> 12:19  
 umbrella <sup>[1]</sup> 11:2  
 unbalance <sup>[1]</sup> 56:22  
 under <sup>[9]</sup> 8:16 9:19 10:10 11:1 12:16 28:6,14,18,24  
 undersigned <sup>[1]</sup> 1:15  
 understand <sup>[10]</sup> 4:21,22,23 23:4,9 35:10 36:18 38:12 39:21 48:18  
 understanding <sup>[2]</sup> 18:8 27:5  
 understood <sup>[2]</sup> 4:25 13:8  
 union <sup>[1]</sup> 49:5  
 united <sup>[1]</sup> 1:1  
 unless <sup>[1]</sup> 57:1  
 unload <sup>[2]</sup> 14:24 52:24  
 unloaded <sup>[2]</sup> 53:4 57:18  
 unloading <sup>[2]</sup> 19:17 25:2  
 up <sup>[10]</sup> 22:9 30:16 38:17 49:12 50:12 55:17 56:1 57:14 58:8 59:1  
 using <sup>[1]</sup> 49:20

## V

vacuum <sup>[1]</sup> 51:14  
 vaguely <sup>[2]</sup> 60:1,5  
 various <sup>[2]</sup> 6:17 15:6  
 versus <sup>[2]</sup> 9:1 54:17

volume <sup>[3]</sup> 34:6 45:23,23

volumes <sup>[1]</sup> 44:20

vs <sup>[1]</sup> 1:6

## W

waive <sup>[1]</sup> 65:1  
 waived <sup>[1]</sup> 65:4  
 waiver <sup>[1]</sup> 64:23  
 walk <sup>[1]</sup> 53:21  
 wanted <sup>[2]</sup> 26:20 41:23  
 way <sup>[6]</sup> 32:13 49:23 50:16 51:11 52:15 63:10  
 waybill <sup>[3]</sup> 18:3 38:2 48:8  
 ways <sup>[3]</sup> 13:19 20:2 43:5  
 wednesday <sup>[1]</sup> 22:2  
 week <sup>[3]</sup> 15:18 22:1 52:16  
 weekend <sup>[1]</sup> 52:11  
 weeks <sup>[1]</sup> 3:25  
 weight <sup>[2]</sup> 18:4,5  
 western <sup>[1]</sup> 1:2  
 whatever <sup>[1]</sup> 45:24  
 whenever <sup>[3]</sup> 14:13,17 29:24  
 whereof <sup>[1]</sup> 66:14  
 whether <sup>[4]</sup> 18:22 25:21 43:25 51:8  
 whole <sup>[2]</sup> 44:11 66:6  
 whom <sup>[4]</sup> 3:22 10:4 26:4 31:8  
 will <sup>[2]</sup> 4:25 28:3  
 wind <sup>[1]</sup> 42:15  
 without <sup>[5]</sup> 49:16 57:24 58:1 59:24 66:11  
 witkowski <sup>[10]</sup> 19:6 26:3 31:9,22 32:23,23,25 38:7 46:22 62:24  
 witness <sup>[5]</sup> 3:2 32:24 33:2 64:23 66:14  
 word <sup>[2]</sup> 11:15 13:19  
 words <sup>[3]</sup> 11:16,17 64:11  
 work <sup>[2]</sup> 43:12 52:20  
 worked <sup>[3]</sup> 3:23 47:1 53:18  
 worth <sup>[1]</sup> 54:8  
 write <sup>[3]</sup> 19:25 29:9,18  
 writings <sup>[1]</sup> 52:21  
 written <sup>[1]</sup> 8:23  
 wrote <sup>[1]</sup> 16:19

## Y

yard <sup>[5]</sup> 15:20 19:21 25:2 29:9,10  
 yards <sup>[2]</sup> 15:9,11  
 year <sup>[4]</sup> 6:8 23:19 35:16 47:5  
 years <sup>[7]</sup> 4:2 9:8,22 23:23 35:20 52:9 60:9  
 yep <sup>[1]</sup> 48:11